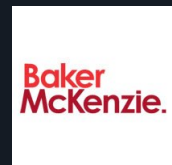


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United Kingdom Tax Disputes

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This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in United Kingdom.

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United Kingdom: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

It is necessary to register with His Majesty's Revenue and Customs ("HMRC") if the taxpayer is within the charge to UK tax. Separate registrations or notifications are required for different taxes.

A corporate taxpayer must register for corporation tax within three months of incorporation, although in practice many register at incorporation. A non-UK corporate taxpayer with a UK permanent establishment must first register with Companies House within one month of opening the UK establishment.

A non-UK corporate taxpayer without a UK permanent establishment may need to register for UK income tax by 5 October following the end of the tax year in which liability to income tax arose.

A taxpayer established in the UK must register for UK value added tax ("VAT") if (i) their total taxable turnover for the last 12 months goes over £90,000 (this is the VAT threshold from 1 April 2024); or (ii) they expect their taxable turnover to go over £90,000 in the next 30 days. Businesses established outside the UK must register for UK VAT if they make, or intend to make in the next 30 days, any taxable supplies in the UK. A taxpayer that does not meet the above criteria may be able to voluntarily register for VAT if they intend to make taxable supplies in order to recover VAT on costs.

Where relevant, a taxpayer may also need to complete other registrations or notifications, for example, registering as an employer for the purposes of payroll taxes.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or is there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

The taxpayer is expected to file a self-assessment, making their own assessment as to tax liability which stands unless checked.

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Taxpayers are able to make amendments to their corporation tax and income tax returns for up to 12 months after the filing date. For VAT, taxpayers can submit a Notice of Error Correction to HMRC to amend their VAT returns for the preceding 4 years (the time limits run from different dates depending on the type of error being corrected). Taxpayers can also correct VAT errors that were non-deliberate errors for the preceding 4 years by correcting the errors in their VAT account and on their next VAT return, where the net value of errors is either £10,000 or less, or between £10,000 and £50,000 but less than 1% of the total value of sales for the VAT return period in which the error was discovered.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

For direct taxes, including corporation tax and income tax, HMRC may open a compliance check (or "enquiry") into a taxpayer's tax affairs within a set time period (typically 12 months from the due date for filing the tax return). Following completion of an enquiry, HMRC will issue a "closure notice" to confirm either that there are no amendments to be made or to charge additional tax. If HMRC are out of time to open an enquiry, they may be able to issue a discovery assessment to charge additional tax or a discovery determination to reduce losses. In rare cases, HMRC may issue a jeopardy amendment during an enquiry where they consider there is a real risk of the loss of substantial amounts of tax (for example, a company about to go into liquidation).

For indirect taxes such as VAT, HMRC have the ability to issue an assessment.

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

For corporation tax and income tax, HMRC generally have one year following the filing date of a tax return to commence an enquiry.

If HMRC fail to open an enquiry in time, they may issue discovery assessments or discovery determinations within four years following the end of the accounting period where they make a discovery. However, this is extended to six years if the taxpayer was careless and twenty years if the taxpayer caused a deliberate error.

For VAT, HMRC can assess within 2 years following the end of a VAT return period, or 1 year after evidence of new facts capped at 4 years. This time can be extended to twenty years if the taxpayer has made a deliberate error or failed in certain notification obligations e.g., failure to notify of a VAT registration obligation.

6. How is tax fraud defined in your law?

There is no single definition of tax fraud as it is based on numerous statutes and developed through case law. HMRC summarise tax fraud as "any deliberate omission, concealment or misinterpretation of information, or the false or deceptive presentation of information or circumstances in order to gain a tax advantage." Tax fraud covers a wide range of illegal activity, including but not limited to deliberately submitting false tax returns and falsely claiming repayments or reliefs. Enabling tax fraud is also illegal in the UK, which includes encouraging, assisting, or otherwise facilitating another person in carrying out offshore tax evasion or non-compliance with UK tax law.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a view to seeking a prosecution and custodial sentence?

HMRC's starting point is to use civil powers to obtain information, collect unpaid tax and impose penalties. HMRC's Fraud Investigation Service carries out civil investigations where taxpayers are suspected of underpaying tax. Where fraud is subsequently discovered or suspected, taxpayers may be given an opportunity to disclose fraudulent conduct in return for HMRC undertaking to not commence a criminal investigation. For cases where only criminal sanctions are appropriate, or where HMRC wish to send a strong deterrent message (e.g., cases involving organised crime), a criminal investigation with a view to prosecution will be conducted.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

HMRC have the right to check whether any tax return is accurate and complete. However, a variety of factors may influence the frequency with which any taxpayer is audited such as the perceived level of risk the taxpayer poses, whether HMRC have open enquiries for past periods and if the taxpayer made a disclosure in their filed return.

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

HMRC officers are expected to carry out their role in accordance with the Civil Service Code and the HMRC Charter.

HMRC's Enquiry Manual sets out HMRC's approach to carrying out enquiries. Generally, HMRC encourage taxpayers to work collaboratively and case teams are expected to be reasonable.

As a public authority, HMRC must not abuse their powers and taxpayers have recourse against overreach by way of judicial review. This includes, for example, the expectation set out in the HMRC Charter that HMRC will treat every taxpayer fairly.

10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

HMRC have statutory powers to request information. The information requested must be in the taxpayer's power and possession, reasonably required for the purposes of the enquiry and not legally privileged. This power extends to emails.

In practice, HMRC will specify whose emails they require, a date range and a set of key words. They will normally agree to the exclusion or redaction of emails of a personal nature and anything that breaches GDPR obligations if shared.

HMRC have the option of seeking approval on the content of an information request from a specialist tax court (the First-tier Tribunal ("FTT")).

HMRC do not have to obtain the FTT's approval to issue an information notice to a taxpayer, although they have the option to do so.

Taxpayers may appeal the information request to the FTT, unless the information requested comprises the taxpayer's statutory records or HMRC obtained FTT approval prior to issuing the request.

11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

HMRC have statutory powers to request information from third parties. However, HMRC must obtain the taxpayer's consent or the FTT's approval before issuing a third party notice. Further, the information requested must be in the third party's power and possession, reasonably required for the enquiry, not legally privileged, and it must not be unduly onerous for the third party to comply with the request.

Third parties may appeal the information request to the FTT on the grounds of onerousness, unless the information requested comprises the taxpayer's statutory records or HMRC obtained FTT approval prior to issuing the notice.

HMRC have a separate statutory power to obtain information from financial institutions, provided the information is not onerous to provide and it is reasonably required for the purposes of checking a person's tax position or collecting debt of a taxpayer.

Financial institutions do not have a right of appeal against the information request itself.

HMRC may also issue a bulk-data request to data-holders. Unless HMRC obtained FTT approval to issue the request, data-holders may appeal the information request on the basis that it is unduly onerous to comply, they are not a "relevant data-holder" under the legislation and/or the data specified is not relevant data.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

It is possible to settle an enquiry by agreement prior to litigation. The process for agreeing, documenting, and implementing such an agreement may vary based on several factors including whether there is an open enquiry or an appeal and the nature of tax is at stake.

For corporation tax and income tax, if HMRC have yet to issue a closure notice following an enquiry, any agreement can be reflected in the closure notice.

If an assessment has been issued and appealed, a taxpayer may agree to settle with HMRC. For direct taxes, taxpayers may enter into a "section 54 agreement" pursuant to section 54 Taxes Management Act 1970; for VAT, taxpayers may enter into a "section 85 agreement" pursuant to section 85 of the Value Added Tax Act 1994.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

If a taxpayer is concerned about how they are being treated, they have a right to complain. This can be done informally by speaking to the HMRC officer or case team they have been dealing with. Alternatively, where a formal complaint is necessary, HMRC have a published process which is publicly available on the UK Government's website.

In certain circumstances, remedies may also be sought from courts. For example, taxpayers can request the FTT to direct HMRC to close an enquiry.

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Where a taxpayer disagrees with a tax assessment, they have the right to appeal.

15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

The method of appeal varies depending on the nature of tax at stake. For direct taxes, a taxpayer must first appeal an assessment to HMRC in writing. After this, the taxpayer may request or HMRC may offer an independent review, or the taxpayer may immediately notify their appeal to the First-tier (Tax) Tribunal (the "FTT").

If there is an independent review, the taxpayer must wait until the conclusion of the independent review before notifying the appeal to the FTT.

For VAT cases, HMRC must offer an independent review at the time of issuing a decision and/or assessment. The taxpayer has the option of accepting HMRC's offer of

independent review or appealing the decision/assessment directly to the FTT.

16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

Appeals are not publicised until the hearing is listed on the cause list (i.e., a list of cases published by the FTT, Upper Tribunal or other Courts with details of the parties, hearing venue and time). Once listed, third parties may apply to the Tribunals or Courts for copies of documents referenced in the hearing. The Tribunals and Courts normally provide parties to the appeal an opportunity to submit objections against such application.

Hearings are generally held in public. The Tribunals may consider a private hearing is justified if, for example, it would be in the interests of public order or national security, to maintain confidentiality of sensitive information or avoid serious harm to the public interest.

Written decisions are normally published for substantive tax appeals; the FTT may choose not to publish some decisions if they are preliminary issues or procedural in nature (for example, decisions on closure notice applications).

The issues concerning the preparation of full written reasons and publication of FTT decisions are subject to an ongoing public consultation due to close on 22 October 2024.

17. Is the procedure mainly written or a combination of written and oral?

Some cases, normally procedural applications, may be considered by the FTT without a hearing, in which case submissions are all written.

Even if there is a hearing, the FTT may direct that submissions be limited to oral arguments during the hearing without the necessity for parties to file written arguments beforehand. This tends to be limited to straightforward cases, such as procedural applications where the parties request a hearing.

For substantive tax appeals, a combination of written and oral submissions are made to the FTT and/or the Upper Tribunal.

18. Is there a document discovery process?

Once an appeal has been notified to the FTT, parties will be directed to exchange a list of documents on which they wish to rely. Each party must make a copy of all of the documents listed available to the other party.

19. Are witnesses called to give evidence?

Witnesses are not mandatory, but parties must present facts to the FTT and this may only be possible or effective through a witness testimony.

Since the FTT is the "fact finding" Tribunal, witnesses are normally only called at this stage.

20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

The burden of proof is generally on the taxpayer. In other words, the taxpayer must be able to support their filed tax position.

21. How long does an appeal usually take to conclude?

At the FTT level, it normally takes around one year to one and a half years from notification of the appeal to publication of a written decision.

The timeline is generally quicker for straightforward appeals or applications determined on paper.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

Generally with direct tax cases, it is possible to postpone payment of the tax in dispute until conclusion of an appeal. There are exceptions, such as diverted profits tax, for which an upfront payment is required prior to appeal.

For VAT, taxpayers must pay the tax assessed before notifying their appeal. However, it is possible to make a hardship application to postpone payment.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

The Tax Tribunal system is designed to enable laypersons to represent themselves in tax appeals. It is

common practice for taxpayers to appear, or for their accountants or tax advisors to appear on their behalf.

For complex cases, generally, taxpayers instruct solicitors and barristers, and the barristers will appear before the Tribunals to make oral submissions.

24. Is there a system where the “loser pays” the winner’s legal/professional costs of an appeal?

At the FTT level, parties will only be within the scope of the costs regime, which shifts the burden of paying costs onto the losing party, if the case is categorised as “complex” and the taxpayer does not opt out within a specified period of time.

In the Upper Tribunal and higher courts, the general rule applies under which the losing party is liable for the winning party’s costs, normally assessed on a standard basis (the winning party can expect to recover 50%-70% of their costs).

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

HMRC encourage taxpayers to apply to use alternative dispute resolution (“ADR”) in certain circumstances, through the use of an HMRC trained mediator. Taxpayers may apply for ADR at any stage of an enquiry or Tribunal proceedings prior to a hearing. Each application is assessed on a case-by-case basis and ADR does not affect a taxpayer’s right to appeal. Multiple exclusions apply, notably certain disputes about HMRC delays, cases being investigated by HMRC’s criminal division and disputes about tax credits, among others.

26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Appeals following the FTT’s decisions are only allowed on questions of law and with permission.

A losing party wishing to appeal must first apply for permission to appeal to the relevant Tribunal or Court that made the original decision under appeal. For example, the losing party must apply to the FTT for permission to appeal an FTT decision.

Save for rare cases in which appeals are “leap-frogged”, the next step following the FTT is the Upper Tribunal, then the Court of Appeal.

The highest appellate court is the Supreme Court.

27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

Inaccuracy penalties are the common penalties that can be applied when additional tax is charged. These penalties may amount to 100% of the potential lost revenue (i.e., the difference between the tax self-assessed and the tax actually due, or losses overstated).

The level of penalty charged depends on taxpayer culpability. An inaccuracy penalty can be reduced to nil if a taxpayer is able to demonstrate they took reasonable care in reaching their filing position.

28. If penalties can be mitigated, what factors are taken into account?

A maximum reduction of 100% can be given and will be influenced by the level of “telling” (up to 30% reduction), “helping” (up to 40% reduction), and “giving access” (up to 30% reduction) that the taxpayer is seen to provide.

To qualify for a reduction for “telling”, a taxpayer must tell HMRC about the error. The disclosure must be “unprompted” to qualify for maximum mitigation; i.e., a disclosure made at a time when the taxpayer has no reason to believe that HMRC will discover the error.

To qualify for a reduction for “helping”, a taxpayer must help quantify the amount of the inaccuracy or under-assessment.

For “giving access”, a taxpayer must allow HMRC access to records for the purposes of ensuring that the inaccuracy or under-assessment is fully corrected.

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

In relation to direct taxes, HMRC remain active in transfer pricing enquiries. Although litigation in this area has historically been rare, these enquiries tend to be very complex. Further, HMRC have shown a heightened

interest in challenging intercompany loan relationships they perceive to be tax motivated (i.e., loan relationships with an “unallowable purpose”).

For VAT, HMRC are active in litigating across a wide-range of issues and sectors. HMRC continue to be active in challenging VAT recovery in supply chains connected with VAT fraud.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

As HMRC has no set time limit within which to settle an enquiry, enquiries can stretch back to accounting periods ending more than a decade ago. In these cases, it is challenging for taxpayers to gather and present contemporaneous evidence to support their filed position whether by way of documents or producing witness evidence. This issue is exacerbated by the slow cadence at which HMRC conduct enquiries and appeals progress through the Courts.

31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

HMRC are continuing to focus on unallowable purposes cases, following a spate of court decisions upholding HMRC's position. Each case is heavily fact dependent and no bright-line rule exists as to what constitutes a commercial, as opposed to tax, purpose in establishing a loan relationship, making it difficult to predict the success of an appeal.

HMRC are also increasingly challenging the employment status of individuals, resulting in PAYE investigations for employers.

For VAT, HMRC have litigation ongoing in relation to VAT recovery on restructuring costs and share sales, the scope of the exemption for financial services, exemptions for food products including when items are sold as a bundle and the scope of the Tour Operator Margin Scheme. Across a number of these areas HMRC have said they will assess taxpayers who are not applying HMRC's policy position.

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