

At one time or another, every VAT registered business is likely to come under the scrutiny of an assessment by HM Revenue & Customs (HMRC). This is not the catastrophe that it may at first appear to be. In many cases, the assessments are simply incorrect or can be significantly reduced following a proper examination of the issues involved.

This is so often the case for a number of reasons, ranging from misinterpretations of the law, to internal performance measures at HMRC which encourage the issue of assessments.

If presented with a reasoned argument, HMRC can be quite receptive and agreeable. There are effective ways of achieving the desired results while at the same time minimising the costs involved. We have a great deal of experience with the procedures and methods employed by HMRC in VAT inspections and in relation to assessments (see our leaflet 'Coping with the VATman').

Here are some of the most frequent questions our clients ask us....

## **What sort of issues can cause VAT disputes?**

These range from routine late submission of VAT returns and simple accounting errors, to complex judgements about the nature of your business activities and the appropriate VAT treatment.

In most dispute cases, an assessment is raised either centrally by HMRC headquarters, or locally by the VAT officer who visits your premises and carries out the assurance visit. These assessments generally incur interest, known as commercial restitution, and penalties as well.

## **How severe are the penalties that I could incur?**

A few years ago, they were widely seen as draconian. Even now, after a number of revisions, they can still make a significant dent in your profits. And do not forget that any penalty or interest charges that you incur may not be tax deductible.

Typical penalty levels, levied in addition to the VAT amounts, are as follows:

- Late submission of returns - between 2% and 15% of the net tax due on the return;
- Basic accounting errors - 15% of the VAT amount incorrectly treated;
- Late registration - between 5% and 15% of the VAT that should have been declared.

Any assessment issued to you remains on record as tax due until it is either paid or HMRC agree that it should be withdrawn or reduced. If you believe that an assessment is wrong or unduly severe, you must ask for a review of the disputed decision as soon as possible. There are strict time limits to be observed; an assessment must be paid within 30 days unless you have appealed against it.



## **What other issues can cause disputes?**

It is not assessments alone that cause disputes, although they account for most disagreements. Other issues include:

- the requirement for security to be deposited;
- the refusal of, or the imposition of, VAT registration;
- the liability of HMRC to pay costs or interest to you;
- differing methods of valuing your sales and imports;
- HMRC rulings and requests for the pre-approval of transactions.

Clearly VAT disputes can arise in relation to almost every aspect of your business.

HMRC will always issue their assessment/decision in writing, although occasionally you may have to ask for this. It is then your decision whether or not to accept it.

## **What do I do if I disagree with the assessment?**

You must write to HMRC and ask for a 'local reconsideration' of the assessment or decision that you dispute. This reconsideration is generally carried out by an officer of a higher grade than the one who made the initial decision. In your letter, you must ask for an extension to the time limit allowed for a formal appeal to the VAT Tribunal; the clock starts ticking from the moment the initial decision is made.

## **Will HMRC pay any costs I incur if they are wrong?**

This is an important area that is under constant review. Currently, HMRC will only meet your costs for the period from when an appeal was made up until the VAT Tribunal. This means that any costs incurred in securing a local reconsideration will not be reimbursed to you.

This inequity means that many taxpayers lodge formal appeals immediately, simply so that their costs are covered. Fortunately, HMRC rarely seek to recover costs from appellants who either lose the case or back down before it is heard. Statistics show that only around 30% of all appeals to a Tribunal actually make it to a hearing! In most cases, one party backs down after discussion.

We believe in maintaining good relations with all of the tax authorities we deal with on behalf of our clients. We frequently achieve better results by having an open discussion with HMRC, rather than by opting for immediate appeal that, in many cases, will never reach a Tribunal.

## **What do I do if I lose the Tribunal case?**

If the case has been heard correctly, and all facts have been considered, then you have little choice but to accept the verdict.

If you still have a genuine grievance, and perhaps you believe that there was a legal error at the Tribunal or an incorrect view on an important issue, then you do have the right to appeal to the High Court.

Subsequent appeals can be submitted by either party to the Court of Appeal, the House of Lords, or by a reference to the European Court of Justice. However, preparing and presenting an appeal at this level can be costly. Even though it seems unfair to small businesses, it just may not be worth the expense. At UHY Hacker Young, we will always offer our honest opinions on what we believe are your genuine chances of success.

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