

# A matter of timing

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*HMRC believe that interest has been underdeclared on a client's tax return, but is the fact that the investigation was started after the expiry of the twelve month enquiry window within the rules?*

One of my clients has received a letter dated May 2009 from HMRC with regard to his self assessment tax return for the year ended 5 April 2007.

The letter states that the £1,900 bank and building society interest shown as received on his return is substantially less than their information, which suggests that the figure should be in excess of £4,000.

HMRC have now invited my client to complete a form stating that he either agrees or disagrees with the figures and if he does agree, explain the reason for such a difference with a one paragraph space for an explanation.

I have not as yet discussed this with my client. The 2006-07 return was filed within the normal filing limits, so the deadline for an enquiry would surely be 31 January 2009. HMRC now appear to be launching an enquiry in May 2009.

Leaving aside whether or not the department's information on bank interest is correct or incorrect, do they have a statutory right to launch this compliance check into the return now?

Readers' thoughts would be very much appreciated here.

*Query 17,420 - Pastime*

## **Reply from Hold Fast**

HMRC can launch this compliance check and have the power to get the information.

On 1 April 2009, new information powers came into force in FA 2008, Sch 36, with effect for all years, and these allow HMRC to request documents and information if they are reasonably required for the purpose of checking the taxpayer's tax position.

Tax position is defined in Sch 36 para 64 and means the person's position as regards any tax including their past, present and future liability to pay any tax. So HMRC do not need to open an enquiry to seek information.

Schedule 36 para 21 restricts the powers to an extent. An information notice cannot be given if a tax return has been made unless an enquiry notice has been given or an officer of HMRC has reason to suspect that an amount that ought to have been assessed may not have been assessed. So while the window for an enquiry

into the client's 2007 return has closed, HMRC do seem to have reason to suspect under-assessment and any information notice will be valid.

There are appeal provisions in Sch 36 para 29, but I doubt if it would be worth invoking them in this case.

The letter the client has received will be an informal request for information. HMRC's *Compliance Handbook* at CH221000 says:

'Most information and records will be requested informally at every stage of the compliance check. A formal notice should not be issued unless the taxpayer has refused to co-operate with the informal request for information, or has failed to produce some or all of that information in the time shown in the informal request.'

If no reply is received the formal powers will be used. I would have expected HMRC to have enclosed the relevant fact sheet, CC/FS2. If indeed the return is wrong then fact sheet CC/FS6 will be issued.

If HMRC are right about the interest, Pastime will want to check with the client about other accounts and the source of funds.