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Indirect Tax Conference 2015

HMRC approach to VAT disputes and penalties

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11 November 2015

Agenda

Alternative Dispute Resolution (ADR)

- Update on the process
- Indirect Tax cases suitable for ADR
- ADR case study

Penalties

- Penalty “pressure points”
- Case study

Missing Trader Intra-Community (MTIC) Fraud

- Sectors involved
- Risks and risk mitigation

ADR

ADR update

- ADR is changing in HMRC – Resolution Strategy and Policy Unit, Tax Professionalism and Assurance – team to focus on Dispute Resolution Policy and LSS
- ADR cases will be undertaken by the operational teams
- Different ADR application process depending on whether Large Business or Local Compliance Large and Complex
- The general message on ADR from HMRC

Suitability for ADR

Suitable cases	Unsuitable cases
Parties unclear / unable to articulate points in dispute or lack of understanding of positions	Taxpayer does (or has) not work collaboratively with HMRC
No dispute over the technical analysis but parties need to agree methodology and quantify liability	Doubt over strength of evidence and HMRC want to test by cross examination at Tribunal
Dispute / uncertainty over the facts	More efficient to have an issue judicially clarified so precedent can be applied elsewhere
Issues / facts with no precedent value or wider impact	“Red Line” - resolution could only be achieved by departure from an established HMRC view / policy line / outside of LSS
Entrenched views / strained relationships or case has stalled	Marketed avoidance
Capable of settlement within the LSS	Tribunal hearing already fixed / stood over cases / issue(s) affecting multiple taxpayers
More than one right answer or where it appears to be all or nothing there may be alternative ways of looking at the facts	Case already being worked within another handling strategy – e.g. HRCP

ADR case studies

- Holdcos and transaction costs – Panel process with HMRC likely to result in the successful settlement of at least 14 historic cases
- Large Business case – HMRC resistant to ADR and aggressively proceeding with litigation – formal ADR application made – resulted in two without prejudice facilitated meetings at which settlement was achieved

Penalties

Update on penalties

5 Key principles of a penalty system:

1. Encourage compliance/ punish non-compliance (not just raise revenues)
2. Proportionate
3. Be applied fairly
4. Provide a credible threat
5. Consistent

Is this reasonable?

Is it working at the moment?

Penalty case study

Manufacturing company

- Error discovered in April 2015 – £1.9m VAT
- Sales omitted from 12/14 return
- Automatically corrected on 03/15 return
- Disclosed to HMRC in April 2015
- HMRC requested further details (May 2015) and asked questions around “behaviour”
- No additional assessments raised but.....
- Penalty of 15% (full mitigation allowed) suspended for 12 months
- Business happy with suspension and signed up

Penalty “pressure points”

What are we seeing:

- Mistake v “failing to take care”
- Prompted v unprompted
- Answering HMRC question
- Reduced penalty options and mitigation
- “Deliberate” and implications
- Suspension
 - Is it a penalty?
 - Conditions
 - Length of suspension
 - The “sting in the tail”...
 - An easy way out but for whom....?
- Time limits

MTIC

MTIC update and risks

- Recap on MTIC fraud
 - Telecoms/ Alcohol/ Energy/ Pharma/ Commodity trading
 - Grey/ parallel market trading/ FMC's
 - Not just a UK issue
- Closer co-operation in the EU
- General risks
 1. Involved in any of the above?
 2. Has the business received a letter from HMRC?
 3. “Means of knowledge” input tax restriction and penalties
 4. Disruptive investigations and SAO?
 5. Commercial damage, reputational and regulatory issues

MTIC – mitigation of risk

Mitigation of risk; needs to be proportionate

- Drafting or amendment of due diligence procedures
- Implement, evidence and “stress test” due diligence procedures
- Check existing counterparties
- Review of supply chain management
- Internal training
- Active engagement with HMRC policy?
- Enquiries and “means of knowledge” challenges (assessments/ penalties)



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