CHARTER TAX

HMRC Nudge Letters – What to Do

HMRC are now receiving lots of data from overseas jurisdictions via the Common Reporting Standard (CRS), from the Land Registry and from Companies House and are seeking to use this data to check that UK taxpayers have correctly reported their income and gains. Indeed, HMRC have started writing to those whose names have appeared in the Panama Papers so there will be more and more taxpayers receiving such letters in the coming weeks and months.

Without the manpower to check all of the data themselves, they are seeking to put the onus on taxpayers to double check the figures for them. They have been doing this by the way of “Nudge Letters”.

What are nudge letters?

When HMRC have (or think they have) information which suggests there is income from a particular source that should be captured on a tax return, they can generate letters to affected taxpayers.

The letters can cover different areas of tax, but tend to follow the same format – asking the taxpayer to check a certain aspect of their return, and either sign a declaration that everything has been reported, or inviting the taxpayer to participate in a disclosure through the Digital Disclosure Service.

What do they mean?

If you receive a nudge letter from HMRC, the first thing is – don’t panic! There are a number of entirely legitimate reasons as to why the figures HMRC received do not match the figures on your tax return. For example:

- The data relates to a different person (for example you are a trustee)
- The CRS data relates to a different period (since many countries report on a calendar year rather than UK fiscal year)
- You claimed the remittance basis and did not remit the income / gain
- A relief applies to the income / gain (such as main residence relief on a gain)

What should I do?

It can be intimidating receiving such a letter from HMRC, although as noted above it does not necessarily mean anything is wrong.

It is however important to take a careful look at your income and gains and consider whether the filings are correct and complete. If you are sure that everything is in order and nothing has been missed, you can respond to HMRC to this effect.

However, HMRC’s letters contain a statement which they ask taxpayers to sign, stating that they understand that a false declaration is a criminal offence and could result in investigation or prosecution. Even minor infringements could therefore have serious implications, and there is no legal obligation on the taxpayer to sign the declaration. Depending on the circumstances, it may therefore be best to respond to HMRC by letter rather than with the certificate provided, even if to the best of your knowledge you have fully reported all of your taxable income and gains.

Making a disclosure

It may be the case that something was missed off the tax return, in which case the omission will need to be corrected.

If the error was on the prior year's tax return, amending that return might be the best option for the taxpayer. Sometimes however a disclosure of historic income / gains is required. This could be done via the digital disclosure service (DDS) as suggested in the HMRC nudge letter – but this is not the only option available; it is also possible to submit outside of this facility.

In our experience, the DDS does not always give the flexibility to allow a taxpayer with more complicated affairs to fully disclose the circumstances surrounding the omission to HMRC. In these instances, we would usually submit a disclosure outside the facility.

What about penalties?

One of the big questions when it comes to a disclosure is what the likely penalties will be. For under-declared tax, HMRC have a scale of penalties which apply to the amount of Potential Lost Revenue.

The percentage penalty here depends on a number of factors, including the actions of the taxpayer (in the original tax report and in the disclosure) and the jurisdictions involved. The penalty could be as little as 10% or as high as 200%. Making a full and swift disclosure can help to mitigate such penalties.

What next?

If you receive a nudge letter from HMRC, the best thing to do is to seek professional advice straightaway, and before signing and returning the certificate to HMRC. Charter Tax can help you review your position and respond to HMRC either with a disclosure or confirming all has been reported.

For more information, please contact **Janet Pierce** on **janet.pierce@charter-tax.com** or **Tom Barker** on **thomas.barker@charter-tax.com** or call us on **+44 (0)20 7084 5771**.

Disclaimer

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Taxation planning concerns the application of complex statute and case law to future events. Accordingly, however expert the opinion given, it is always possible that the Courts will take a different view of the application of the law.

We undertake to apply reasonable care and skill in the provision of advice. We do not guarantee that tax planning steps will in all circumstances achieve a certain legal effect.

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