

How to handle an interview with the VAT man

HMRC's Public Notice 160 (September 2007) is the Authorities' statement of practice about the way they conduct investigations into indirect tax matters. This explains:

- You are encouraged to co-operate
- Fully co-operating with the authority can lead to a reduction in the civil evasion penalty equivalent to 80% of the tax on which penalties are chargeable.

They won't pay your costs for dealing with the investigation. Although they helpfully point out that you can apply for a reconsideration or appeal against a decision to impose a civil evasion penalty what they don't explain is:

- ◆ You must appeal within 30 days of the decision (although time may be extended by the Tribunal)
- ◆ If successful in your appeal the Tribunal may award costs in your favour but only from the date you commenced your appeal

In January 2009 HMRC introduced a new weapon in their long fight against MTIC fraud. Building on the procedures outlined above Public Notice 161 introduces the interview with HMRC for cases of suspected MTIC fraud. It does not apply in other cases of suspected dishonesty.

It is not a legal requirement to engage in the interview process but refusal to become involved is likely to lead to a higher civil evasion penalty if HMRC believe dishonest conduct has been involved. Discounts of up to 80% may still be possible for full and prompt co-operation.

The interview will be preceded by helpful statements from HMRC:

- A. They are not contemplating prosecution (there is a different regime for those cases)
- B. The period or periods which they are investigating
- C. Nature of their suspicions
- D. The grounds for their belief that you are involved in dishonest conduct
- E. False statements can lead to a criminal enquiry with a view to prosecution.

Being a new procedure experience of this process is limited. However there are similar regimes in connection with investigations into the conduct of directors which may lead to disqualification, the so-called Hansard meetings used by the Special Compliance Office of HM Revenue (allegedly unpaid income tax) and interviews about breaches of solicitors professional rules by the Solicitors Regulation Authority.

A feature of such interviews is that the authorities appear friendly. It is vital to remember that whilst they may appear friendly, they are not your friends. Always be accompanied by a lawyer or accountant familiar with these issues. Thorough preparation is vital using the information provided by HMRC to challenge their approach. If at all possible make no admissions as these may be used against you in subsequent interviews or before the appeal Tribunal. Interviews will concentrate on matters which are complex and (from next year) can be up to 4 years old. Most people would have difficulty remembering points of detail particularly in an environment where your livelihood is at risk. Do remember to ask for more time to check your records and investigate. Another interview can always be arranged to deal with outstanding issues. Do not be rushed into giving an answer you may later regret making.

Interviews may be digitally recorded although you can insist on a hand written note being taken.

An investigation can take up to 2 years to complete during which time no decision will be reached but VAT may be withheld.

Remember as a result of recent Court decisions about MTIC and contra-trading HMRC may not be entitled to withhold VAT (let alone impose any penalty). If in doubt, seek advice.

This technical paper has been written as a general guide only. It should not be relied upon as a substitute for specific legal advice. No responsibility can be accepted by the author or the firm for any loss occasioned as a consequence of acting or refraining from action on the basis of this paper.

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