HMRC

Her Majesty's Roller Coaster

Hints on how to survive a tax investigation

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and
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with cartoons by
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Foreword

Most people are happy to pay their dues to the taxman. But no one wants to pay more than they have to. Much of the debate about tax today revolves around the words ‘have to’. How much do we have to pay? And how much do we not have to pay?

The answer is not straightforward. On the whole, taxpayers want a clear set of rules by which they can calculate their true obligations to the state. Yet, despite reams of legislation aimed at helping them to have a more transparent view of how much tax they are expected to pay, the picture only seems to get murkier as the years go by. More and more people feel compelled to seek specialist outside advice about their tax affairs. It is so easy to get the sums wrong.

This book gives the reader a small taste of the issues that might arise should Her Majesty’s Revenue & Customs (HMRC) decide that, in a particular individual’s case, the sums are indeed wrong and insufficient tax has been paid. It combines and updates BDO’s previous books in the series – *An Inspector Returns, War or Peace* and *The Taxman Always Rings Twice*, all of them already classics of their genre.

It also comes with a health warning. Whatever you do, don't get into a serious skirmish with HMRC without decent intelligence, far more of it than can be provided in this slim volume.

Introduction

In recent years, tax evasion has become a hot political issue. George Osborne, while chancellor of the exchequer, said that tax evasion is 'morally repugnant…it's stealing from law-abiding people who face higher taxes in order to make good the lost revenue.' Part of the problem is that the meaning of 'tax evasion' shifts to suit the speaker's purpose.

The UK government's primary focus has been on corporate tax. A number of high-profile cases involving companies like Apple, Google and Starbucks have suggested that multinationals can effectively make themselves stateless for tax purposes. One commentator was moved to say that corporation tax is now 'as voluntary as a collection plate passed around at the end of a church service'. Corporation tax accounts for only 7 per cent of all UK tax receipts.

Despite the world's many other problems, Britain chose to put the issue at the top of its agenda for a meeting of the G8 group of rich countries which it hosted in June 2013. The outcome of the meeting – a pledge to stop companies shifting profits to low-cost tax havens – had, said the prime minister David Cameron, ‘the potential to rewrite the rules on tax’.

A few months later, at a meeting in Russia, the larger G20 group of nations made a similar pledge. The G20’s communique said it would be putting forward suggestions for a system whereby corporate profits would be taxed ‘where economic activities deriving the profits are performed, and where value is created’.

Such things are easier said than done. Nevertheless, politicians are clearly baying for blood, despite the fact that several of them have been caught recently with their own fiscal pants down. Their failure to rein in public expenditure has sent them in search of new ways to manage their nations’ unmanageable debts without, they hope, losing votes in the process. And their eyes have fallen not just on corporations that may have paid less tax than their chancellor would have liked them to. They have also fallen on individuals in a similar predicament.

Although over half of all individuals’ income tax is paid by the top 10 per cent of taxpayers (and around 30 per cent by the top 1 per cent), there is a feeling that the rich are not paying their full share. The comedian Jimmy Carr was criticised by the prime minister in 2012 for using a controversial Jersey-based offshore tax scheme. Carr admitted at the time that he had made a ‘terrible error of judgement’, had left the scheme, and

would subsequently conduct his financial affairs 'more responsibly'. Nevertheless, a year later he was booed off the stage at the Hackney Empire in east London by hecklers shouting, 'Pay your taxes!'

The UK government continued to pile on the fiscal pressure. Its 2014 budget contained proposals to allow HMRC to take unpaid tax directly from a taxpayer's bank account. (Previously the Revenue could only do this with the permission of a court.) A powerful committee of MPs deemed the plan to be 'very concerning'. The committee was also concerned about a proposal to compel upfront payments of tax in disputed cases related to special avoidance schemes.

Then, a mere month after his budget, George Osborne made it clear that this was not to be enough. ‘We are changing the balance of the law,’ he announced, ‘so that the burden of proof falls on those who are hiding their money offshore.’ By this he meant that the government intends (after consultation) to make it a criminal offence for anyone to have an offshore income and not to declare it. It will then no longer be necessary for HMRC to prove that there was an intention to evade paying tax before sending a taxpayer off to jail. Genuine mistakes and misunderstandings will no longer be automatic ‘Get Out of Jail Free’ cards.

At the same time, the government announced its intention to look at ways to increase the penalties for non-payment of tax – at present, fines can amount to twice the unpaid tax that is due. Meanwhile a network of agreements between different tax authorities comes into force in 2016. These allow for the automatic exchange of information about UK residents’ bank accounts in offshore centres. The chancellor says that for ‘those who are hiding their money offshore’, there is now ‘no safe haven and we will find you’. Somalia, of course, remains an option.

One of the consequences of this tax hunt is that Her Majesty’s Revenue & Customs, the nation’s tax collector, is under new pressure to catch those deemed to have paid too little tax, both companies and individuals. A

powerful committee of MPs went so far as to accuse HMRC of losing its nerve 'when it comes to mounting prosecutions against multinational corporations'.

For this, and for other reasons (HMRC's access to a whole new range of information, for example), a growing number of people are receiving what are known as 'Mae West' letters. These are sent by the taxman (see page 17) and suggest that he or she (an increasing number of them are women) might want you, the taxpayer, to 'come up and see me sometime', in the famous phrase of the once-famous blonde. At the end of 2011 over 6,000 people in the UK received just such a letter. HMRC had discovered that they had (not all of them legally) been enjoying the benefits of a Swiss bank account.

The emphasis of the Revenue's letters, however, has been shifting in recent years. Now HMRC's attitude has a more menacing undertone: 'Come up and see me sometime,' it seems to say, 'and make it snappy. Before I come up and see you.'

Fasten your belts

Anyone whose financial affairs come under the scrutiny of an HMRC inspector is in for an emotional roller-coaster ride. In the first few moments of realisation – usually after opening an ominous brown envelope with the letters 'HMRC' on its cover – terror and denial are common reactions, followed in quick succession by anger and regret.

From that moment on, the taxpayer's life can feel a bit like a visit to one of Britain's great theme parks – places full of roller-coaster rides and scary experiences that no one chooses to visit on their own. Who wants to sit in the Titanic Typhoon or the Crash Pad without a comforter at their side, someone they can scream along with at the most scary moments?

It helps too to have a comforter by your side during a tax investigation, someone who knows from experience how such journeys tend to unfold and who understands

A Code of Practice 9 letter from HMRC

Dear xxxx

HMRC has information that gives it reason to suspect that you have committed tax fraud. I intend to investigate the suspected tax fraud so am notifying you that HMRC's Investigation of Fraud Code of Practice 9 (COP9) applies to your tax affairs from the issue date of this letter. My investigation will cover all of your tax affairs.

The Code of Practice 9 enclosed governs how HMRC investigates suspected fraud. You should read the Code of Practice carefully as you need to decide if you wish to co-operate with my investigation. I will ask you to confirm you have read and understood the COP9 before I can engage with you or any representatives you instruct…

…HMRC recommends that you discuss this letter with an adviser who has knowledge and experience of our COP9 investigation of fraud procedures.

Yours sincerely

Investigator

the taxman's jargon, for there is plenty of that. There are also plenty of enigmatic signs about future progress displayed discreetly along the way, some of which have been known to elicit earth-shattering screams from those who have spotted them.

Taxpayers should never be lulled into thinking that an investigation will be like a stroll around the old Crystal Palace, sometimes described as 'the world's first theme park'. Theme-park rides and tax inspectors have moved with the times. Both have been upgraded in recent years – with new loops, new skills and new challenges.

Once upon a time, inspectors used to write polite letters from musty offices after finishing the day's *Times* crossword. Now they are more likely to pay an unannounced visit on their way home from a martial-arts class and throw taxpayers into a spin such as they won't experience this side of the legendary Smiler at Alton Towers.

There are a number of other features that a tax investigation has in common with a day out at a theme park:

1. **Feelings of disorientation**. It is easy to lose one's sense of direction on Her Majesty's Roller Coaster, as on any other. Everything is not always as it seems. The overhanging branch is a sleeping creature; the clause allowing capital gains to be offset against losses applies only to a group of people to whom you do not, you belatedly discover, belong.