
Corporate

Tax Enquiries: Closure Rules

Response to Consultation
(published 8 December 2014)

Introduction

1. The Institute of Financial Accountants (IFA) and the Federation of Tax Advisers (FTA) welcome the opportunity to comment on the consultation documents in respect of the consultation on tax enquiries: closure notices published by HM Revenue and Customs on 8 December 2014.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the IFA and the FTA is given below.

Who we are

4. The IFA is an internationally recognised professional accountancy membership body whose members work for small and medium-sized enterprises (SMEs) or who run or work in small and medium-sized accounting practices (SMPs) that advise SMEs.
5. Following the amalgamation of the IFA with the Institute of Public Accountants (IPA) of Australia on 1 January 2015, the IFA is now part of the IPA Group. It is the world's largest SME/SMP focused accountancy group, with more than 35,000 members and students around the world, which will take the global lead on accountancy, tax and business matters for micro, small and medium-sized enterprises.
6. At the IFA, we put small and medium enterprises (SMEs) first, recognizing their role as vital wealth-creators, as employers to more than half of the UK's private sector workforce and as the power behind vibrant urban and rural communities. We hold the interests of small and medium practices (SMPs) in the accounting profession in equal regard.
7. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.
8. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.
9. Founded in 1916, the IFA supports over 10,000 members and students in more than 80 countries with a programme of professional qualifications and education. As well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.
10. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession. As such, the IFA takes its place alongside the UK and Ireland's six chartered accountancy bodies, as well as 135 national and regional accountancy organisations representing 125 countries and jurisdictions.
11. The IFA is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications; and is authorised by HM Treasury for Anti Money Laundering supervision.

General Comments

12. Thank you for the opportunity to respond the consultation.
13. Our overriding comment in relation to the consultation is that whilst the IFA agree that HMRC should have the powers and resources it requires to effectively tackle tax evasion and abusive tax avoidance, we have some concerns and reservations about these proposals. Our main concern is that the current proposals only enable HMRC to consider 'sole referral' to the Tribunal and that the taxpayer has to rely on existing legislation under s.28A Taxes Management Act 1970 to apply for closure on the whole case. This inequity is unnecessary and unfair and taxpayers should be given the same opportunity as HMRC to seek resolution on an individual aspects of an enquiry.

Specific comments on the consultations

14. In addition to our general comments above, our comments on specific questions as set out in the consultation document are set out below.

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Q1: We would welcome views on the problem as expressed in this document.

Response:

15. We welcome proposals which would seek to speed up the enquiry process, which are fair and proportionate and apply in equal measure to HMRC and the taxpayer.

Q2: Do you agree with the proposed changes to the tax enquiry process?

Response:

16. We do not agree with the current proposed changes to the tax enquiry process. There are two possible changes that we consider should be explored further. These are:
 - a. The effect of the current 'joint referral' process is to give equity in law to HMRC and taxpayers alike. If there is an aspect of any enquiry that could be closed because both sides have agreed the position or that it is clear that the aspect cannot be progressed, for example via the Alternative Dispute Resolution process, then the party denying the 'joint referral' should be required to justify their decision to a Tribunal who would be able to rule whether or not the party had reasonable justification for withholding their agreement. If the decision is that there is no reasonable justification to withhold agreement to a joint referral then the court should direct the aspect to Tribunal.
 - b. If the proposal for 'sole referral' remains, then this option must be made available to HMRC and taxpayers.

Q3: Do you have any suggestions concerning the terminology of the new notice?

Response:

17. The terminology of any notices or procedures should be clear, concise and understandable and written in "plain English".
18. We consider that the terminology as presented meets these objectives.

Q4: Do you have any suggestions for how the proposed changes might be adapted to those limited cases where the tax treatment of a particular issue is no longer in dispute?

Response:

19. If the case is no longer in dispute, then the party that doesn't want the particular issue to be closed should make representations before Tribunal as referred to at 16a above.

Q5: Do you agree with the proposed amendment to the joint referral process?

Response:

20. We agree, subject to point 21 below, with the proposed amendment to the joint referral process as outlined in point 4.5 of the consultation, enabling any payment or repayment of tax to be made within 30 days of any tribunal referral closure notice being issued.
21. The tribunal referral closure notice is issued by the tribunal and not by HMRC.
22. This appears to be a sensible decision allowing payment/repayment of tax regarding an issue to be made where both sides agreed to the joint referral.

Q6: Should any other taxes be included in the scope of the proposal?

Response:

23. Income tax/NIC, corporation tax and CGT all have many individual components each of which are capable of being the subject of an aspect enquiry. For this reason, it is appropriate for these taxes to be included within the referral process.
24. It is unclear how this proposed legislation would work for other taxes such as Petroleum Revenue Tax, Tonnage Tax, Landfill Tax, Stamp Duty Land Tax. We therefore suggest that these remain outside the scope of the proposals.
25. We consider that there is scope to deliberate inclusion of VAT in the referral process as this does have many aspects to it.

Q7: Do you agree with the proposed governance safeguards?

Response:

26. We have a number of concerns with the safeguards as they currently proposed:
 - a. We consider that any proposal should incorporate a sole referral by either HMRC or the taxpayer;
 - b. The fact that HMRC will consider the sole referral request internally before issuing a tribunal referral notice could indicate a lack of independence;
 - c. An appeal against a tribunal referral notice could incur potentially unnecessary costs for the taxpayer in cases where HMRC have not considered all the alternatives such as ADR.

Q8: We would welcome views on any additional safeguards to constrain the use of this proposal.

Response:

27. Our position on safeguards to constrain the use of this proposal has been fully documented at point 26 above.

Q9: Do you agree with the assessment of impacts?

Response:

28. We agree that any impact would ultimately depend on the final design of the policy. We have expressed above our concerns regarding the current proposals and consider that amendments are required in order to make this a workable policy for HMRC and taxpayers alike before it can be introduced into legislation.
29. Any amendments to the policy may affect the impact assessment and we recommend that the impact assessment is reviewed prior to legislating as at present it is vague and lacks substance.

Should you wish to discuss our responses further, please contact AdamL@ifa.org.uk in the first instance.