

# TAXING MATTERS

## TAX MAN WINS IN COURT OF APPEAL

Tax officials are entitled to investigate a tax return after the usual one-year limit has passed if their discovery assessment letter meets one of two tests, according to a recent Court of Appeal ruling that reaffirms a long-established power for the taxman.

In a recent case, *Derek Hankinson v HMRC*, Hankinson who had already lost his appeals in the first tier and upper tier tribunals, lost again in the Court of Appeal. Hankinson had challenged the right, that HMRC had raised an assessment under discovery provisions in 2005 for a suspected tax loss in 1998/99. In the judgment published in December last year Lord Justice Lewison concluded that HMRC's use of section

29 was valid. The Court of Appeal decision was not a surprise to tax experts; it was a useful piece of case law for accountants dealing with tax investigations to bear in mind.

**What is a discovery?** This is where information comes to hand, that was not known by HMRC during a period when they were entitled to check, or enquire into, an individual's self assessment return. Normally there is a time limit that HMRC generally have to operate within. This is within twelve months from the date the return was submitted if this was done on time. For those submitting late returns, there is an approximate fifteen-month window.

### What are these two tests?

Under section 29 of the Taxes Management Act 1970 (at the time of the case), however, HMRC can investigate tax returns after the one-year window by sending a discovery assessment letter if one of two conditions apply: •Firstly, the full and accurate facts were not available to HMRC officers due to incomplete disclosure, negligence or fraudulent behaviour by the taxpayer or agents; •Secondly, the HMRC officer completing an enquiry could not have reasonably been expected to have been aware of the loss of tax.

### Why are discovery assessments raised?

In most circumstances these assessments

result from a current intervention (enquiry or investigation in old terms) when information is obtained, or assumptions are made, that there has been a loss of tax to HMRC. Whilst these can be appealed against, generally in most circumstances, compromises are reached during a negotiation process with HMRC through the taxpayers' accountant.

Paul Taylor of PBT Tax Solutions and creator of Taximanager, the online accounts system for the driver, points out that whilst any accountant can generally prepare accounts and submit the relevant Self Assessment returns, not that many are experienced at protecting the interests of their client, in the event of an intervention.

When choosing an accountant this is perhaps a good thing to establish at the outset.

### More funds available for Investigations

Following on from this ruling, HMRC have stated that they had been given extra funds for tax investigators to help reduce tax avoidance. That pressure to increase tax receipts means that HMRC is likely to use Section 29 more often for tax investigations. Investigation experts say: "HMRC is increasingly using its discovery powers."

However Paul Taylor, along with many experts, firmly believes that despite HMRC's powers the best practice is to get the return in as soon as is practically possible after 6

April.

For those who have just scrambled their return in before the recent 31 January deadline, this is maybe something to bear in mind and get prepared for a couple of months' time.

### Paul Taylor PBT Tax Solutions

If any readers have any queries then initial advice is free, please email [pbttaxsolutions@gmail.com](mailto:pbttaxsolutions@gmail.com) or phone 01224-536194

Paul Taylor has provided a series of articles on self employment, record keeping and investigations. These can be accessed through PHTM back issues, on our website [www.phtm.co.uk/news/paper.asp](http://www.phtm.co.uk/news/paper.asp)

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