HMRC Indirect Tax Non-Statutory Clearance Team

Indirect Tax

01 October 2019

CIOT attended a meeting in August with the HMRC Indirect Tax Non-Statutory Clearance (ITNSC) Team. The purpose was to meet the team, understand the process for indirect tax non-statutory clearance requests and discuss the high rejection rate (c. 75%). We also discussed concerns raised by our members and possible improvements.

What is a non-statutory clearance?

Where there is no provision in legislation for HMRC to provide a statutory clearance, but the taxpayer would like a decision from HMRC that can be relied upon, it is possible to apply for a non-statutory clearance provided the request meets the application criteria, which is published on gov.uk in 'Annex D'. The key to having a case accepted is that both the taxpayer and HMRC agree that there is uncertainty in the published guidance (for example, it is silent on the issue or open to different interpretations).

Where taxpayers or their agents have contacted HMRC's Written Enquiries team, but the enquiry meets the criteria of a non-statutory clearance, there are internal procedures whereby such requests are escalated to the ITNSC team.

Where HMRC provide a ruling that can be relied upon, the taxpayer has the right to a review or appeal when the transaction has taken place.

What cases are not accepted as a non-statutory clearance?

Cases that are not accepted include:

- those where ‘Annex D’ requirements are not met, as uncertainty has not been established by HMRC;
- tax avoidance;
- requests from representatives where the client details are anonymised;
- requests regarding transfers of going concerns, unless the ‘Annex D’ requirements are met (specifically, where HMRC agrees that there is uncertainty in the guidance); and
- those involving circumstances of failure by the taxpayer or agent to respond to information requests.

HMRC’s statistics on non-acceptance are not currently broken down into the reasons for rejection so this will be considered going forward.

What is the process?

All submissions are reviewed to determine whether enough information has been provided to meet the ‘Annex D’ stipulations, the case complexity and whether referrals to Policy or a Unit of Expertise are required. The team will try to contact the taxpayer/agent by phone to discuss the case prior to completing its written response.

What cases are accepted?

The most common reason for uncertainty is with new products, where the VAT liability could fall within different areas of the guidance that have different VAT liabilities. The top five liability queries for 2018/ 19 were: food products, construction, place of supply, finance, and land and property.

Member queries

We put several queries raised by our members to HMRC, including:

- **Are you a revenue generating team?**
  The team has no revenue generating targets so there are no statistics kept on yield. They apply the same procedural steps to each case.

- **Where there is uncertainty on a liability discovered on a VAT inspection, what happens if the VAT inspector takes a view that the**

taxpayer/agent does not agree with?
Once a compliance officer is involved with a (typically onsite) liability issue, disagreements would be escalated via the local compliance review team rather than the ITNSC team.

- **What is the position on costs where VAT clearance rulings turn out to be wrong?**
  This is set out in the redress and complaints manual on gov.uk.

- **What's the difference between writing to Written Enquiries and VAT clearances?**
  A submission to VAT clearances should meet the criteria of 'Annex D' with the key point being that there must be uncertainty in the guidance established by both the taxpayer and HMRC.