# Mind the tax gap

**Beware the sudden rise in tax investigations... and penalties, says Mike Luckett**

Let's face it, close scrutiny from the tax office is never a welcome thing for any business. Unfortunately it would appear that tax investigations are now on the rise and estate agents would be wise to make sure they keep within the rules and minimise the risk of an enquiry by HM Revenue & Customs (HMRC).

Judging from what we've seen in the market recently, it would appear HMRC are on a mission to get tough. In fact, a recent article in The Sunday Times reported that the Revenue has been told to collect more money in a bid to close the 'tax gap' and small firms are thought to be an easy target.

In addition to the penalties, surcharges and interest that are likely to be charged if something is late or wrong, the cost of dealing with these enquiries (in terms of both staff and management time and accountancy fees) is not to be underestimated.

## Penalties

In recent years, HMRC has shifted much of the burden of tax compliance on to the taxpayer, with the introduction of automatic penalties for those who do not file and pay on time. This has enabled it to focus far more of its resources on enforcing the rules and, as a result, the number of tax enquiries or investigations has increased significantly. Some commentators have recently reported an increase of over 50% in the number of enquiries in over a year!

New powers that came into effect on 1 April 2009, have placed a greater burden than ever on taxpayers and their agents to provide documentation in support of their tax returns, and have heralded a harsher penalty regime.

Do be warned that all HMRC officers now have the power to approach third parties for information and to enter premises to inspect records. There have also been changes to the tribunals and appeals procedures which have increased the threat of potentially lengthy and costly litigation.

## Regulations

In addition to these new powers, there are a number of longstanding regulations which have rarely been used in the past but this could be about to change. Taking into account UK PLC's overall

budget deficit, the squeeze on public expenditure and the government's desire to balance the books, HMRC must surely be under pressure to collect what tax they can. So how should your business best avoid scrutiny? Let's take a look at three key areas.

## Late tax returns

Those who file their personal tax returns late probably know that the £100 late filing penalty has not been charged if any tax owed for the year concerned is paid by the following 31 January. For tax returns covering the year ending 5 April 2011, this will now change so that those who file late will incur the penalty – even if there is no tax owed or what is owed for the year has already been paid.

## Business records

Just before Christmas, HMRC published a consultation paper announcing that they intend to start a programme of business records checks.

This will review both the adequacy and accuracy of business records within the SME sector. As ever with HMRC consultations, the die appears to be already cast. The programme of checks will begin in the second half of this year, with HMRC projecting 50,000 reviews annually for the next four years. The consultation is merely concerned with how to implement the programme.

This business records check programme will be accompanied by a tariff-based penalty regime for failure to keep proper records. The maximum penalty for such failure currently stands (and will remain) at £3,000, but the imposition of any penalty – let alone the maximum – has historically been quite rare.

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HMRC have said that they do not intend to have a regime which simply levies £3,000 every time there is a failure to keep proper records. The implication is that some level of penalty will be charged, the question is merely how much.

Interestingly, though, HMRC's own 'impact assessment' forecasts that this initiative will bring in £600 million over the four years, which suggests that each of the 50,000 enquiries to be made each year will result in a £3,000 penalty (4 x 50,000 x £3,000 = £600million)!

**Mike Luckett** is a principal at Shipleys LLP and is responsible for the day-to-day running of Shipleys' three tax departments in London, Godalming and Saffron Walden. One of his key specialisms is HM Revenue & Customs tax investigations and, as a former tax officer, he is well aware of the procedure from the other side of the fence. The types of clients that Mike helps with tax investigations tend to be smaller and medium sized owner-managed businesses.
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## Employers' late payments

HMRC has also introduced a penalty scheme for the late payment of income tax, National Insurance Contributions, Construction Industry Scheme (CIS) deductions and student loans, with effect from the 2010/11 tax year. This means that from May 2010 you may have to pay a penalty if you do not make full payment on time.

The penalties will not be levied automatically, but on what HMRC calls a 'risk basis'. The percentage of penalty charged will depend on the number of times your payments are late, and will range from 1% to 4%. However, if your payments are more than six months late this could rise to 5%, and a further 5% if more than 12 months late.

HMRC has also announced proposals for charging in-year interest on late payments, but says this will not start before 6 April 2012. Current interest provisions remain unchanged and HMRC will continue to charge interest on payments received after the due date following the end of the tax year.

## Summary

This is by no means a complete round up of the most common situations in which interest and penalties can be incurred, but the overall trend is clear.

Estate agents would be very wise to adhere to all the tax deadlines relating to their business and ensure that their business records stand up to potential scrutiny. Seek the advice of your accounting adviser if you are in any doubt. You have been warned! ■

For help with these issues contact Stuart Dey, Business Development Director of Shipleys LLP, telephone: 020 7312 6528, deys@shipleys.com