



Season 3

Episode 9 – Tax risk for professionals and professional businesses with Thomas Slipanczewski

Alexis: Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alexis Armitage and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at www.rpclegal.com/taxingmatters.

Alexis: I am delighted to be joined today by Tom Slipanczewski, who is an Associate Director at Deloitte and sits in their tax controversy team. During his time at Deloitte, he has assisted a broad range of clients with tax disputes and investigations ranging from individuals to large multinational privately held businesses and everything in between. Tom has developed particular experience and specialism in assisting professional taxpayers with investigations and disputes and has joined us today to talk about this interesting area. Thank you so much, Tom, for joining me today.

Tom: Hi Alexis, thanks for having me, it's great to be here.

Alexis: So if we just kick things off then, when we say professionals and professional businesses, who are we talking about?

Tom: So when we say professionals and professional businesses, examples of my clients include lawyers and law firms, accountants and accountancy firms, finance professionals such as PE executives, banks and funds etc. At its core, we're primarily talking about those. However, and not to give any spoilers, some of the risks equally apply more broadly to other sophisticated and/or high-profile taxpayers and those with means to take advice. So many of the points will still be relevant more broadly. It's just that for regulated professionals, all of the risks are in play and certainly tend to be far more magnified.

Alexis: And so, what are the risks that regulated professionals and professional businesses should be aware of when they have a tax dispute or investigation?

Tom: All taxpayers can have their tax affairs scrutinised by HMRC. As we know, HMRC can open an enquiry into anyone's return. However, the risks for regulated professionals and professional businesses are greater for a number of reasons. These include reputational, ie if this was to become public, will it harm their reputation? Risks associated with HMRC's perception of this taxpayer group, particularly that this is a group of intelligent, sophisticated taxpayers, some of whom will have expertise in tax too. And it may be easy for HMRC to jump to conclusions on that basis. Regulatory risk, ie is the professional or business going to be struck off or sanctioned? And finally, greater risk associated with them as wealthier or complex taxpayers.

So if I was just to delve into those in a bit more detail, starting with reputational risk, quite often when we are assisting professionals and professional businesses, reputational risk is usually one of the most, if not the most prominent considerations in their mind. So often we'll have the kind of questions of what will my clients think, what will my employer think, what will my employees think, regulators, the wider profession, etc. It goes without saying that reputation is everything to a professional. Therefore, having this in mind from the outset is absolutely vital and should form part of the overall strategy and approach that is taken throughout. In light of this, it's therefore important, I think, to be aware as to how reputational risks may arise in that it may be that matters progress to litigation and therefore it comes out into the public domain in that way.

Of course the taxpayer has more control over that. However matters may become public in other ways too where the taxpayer has little or less control over this such as for example at the most egregious end of the spectrum HMRC are able to name and shame taxpayers if there has been deliberate behaviour or prosecute in cases of tax fraud. There are still

things that can be done to try and limit or restrict reputational risk in such cases. However, the first step is always trying to understand how these risks may present themselves.

If I then move on to risk associated with HMRC's perception of this taxpayer group, we know that from a behavioural perspective, the law holds certain taxpayers to a higher standard, and this will apply to certain professional taxpayers. As a starting point, this is right. So if you're an accountancy firm and you have an error in your return, you are certainly having a different conversation with HMRC than say a local plumber. However, each case turns on its own facts and it's really important to ensure that things don't become overly simplistic when looking at behaviours and how errors have occurred. So to talk through some other examples some errors will occur no matter what, ie if you as a taxpayer have received reporting information from your investment manager, and that information is incorrect, no matter who you are or what your expertise is, that error will always occur and it's just not your fault. Similarly, just because you're a PE exec who has previously done some accounting training at some point in your career, it doesn't mean that you should necessarily be held at a higher standard because of an error in their personal tax return or just because you're a city lawyer who advises multinational corporates on tax, again, that person shouldn't necessarily be held to a higher standard for an error in their self-assessment return. It's not to say that these factors aren't relevant. However, it's important to look at these points in the round and ensure they're given appropriate weight rather than saying, you work in tax, the error that you have made must therefore be deliberate. As we know, such a behavioural determination can have a significant impact on the number of years that HMRC can assess and/or the level of penalty that may be levied. So it's really important that this is correct and appropriately considered by HMRC.

If I then move on to regulatory risk, as we know, tax is complex and taxpayers will make mistakes from time to time. Therefore, it's not to say that any mere error made by a professional or professional business will result in regulatory sanction. However, we do know that certain regulators may sanction professionals in certain circumstances, which generally is at the more egregious end of the scale, such as fraud and deliberate behaviour. So to link back to what I just said with regard to HMRC's perception of these taxpayers, it's important that they reach a fair behavioural conclusion because otherwise it could potentially result in regulatory sanction for them. Separately, there are also other points that should be considered here too, rather than just the obvious and stark examples of where regulatory issues may arise, but also a more common consideration is that we know, for example, if a solicitor was to be made bankrupt, this could have an impact on their professional standing. So for instance, if a large and/or unexpected tax bill lands at a solicitor's door, it's important to have regard to this and proactively think about options and if HMRC are showing increased energy towards the collection of those taxes and suggest that they may start bankruptcy proceedings, for example, this is obviously something that should be borne in mind.

And then finally, just to touch on the final point that I raised, and I don't propose to go into this in huge detail, but it's also worth noting that for professional individuals, many of those fall within what HMRC described as the wealthy population and therefore are naturally and increasingly likely to have more complex affairs. This will of course include professional taxpayers, which generally comes with greater risk for HMRC and for professional businesses, particularly at the larger end of those who operate across multiple jurisdictions. Again, those tend to have greater complexity in their tax affairs and therefore it follows that they will certainly have greater risk too.

Alexis: And so how likely is it, do you think, that regulated professionals and professional businesses may have a tax dispute, investigation or interaction with HMRC as opposed to sort of other groups of taxpayers?

Tom: Okay, so again, just to reiterate, so anyone can have an investigation or enquiry into their tax position. However, it's worth highlighting that errors may be identified or detected through a variety of different means. So you've got the conventional means of offshore information that's exchanged with HMRC or through traditional inquiries, but also there are other means too which may include, for example, for individuals, certain life events may give rise to certain detection risk. So as we've seen in the past, divorce, for instance, can prompt an investigation or disclosure. Additionally, it's worth noting that although we know that the wealthy population is generally one of the most compliant populations, it's still an area that HMRC have significant focus due to the large tax take and therefore continues to be a focus.

For professional businesses in particular, one of the areas that we often see which prompts detection is again, a life event in the business's life. So usually it centres around a transaction where the business, for instance, goes through a due diligence process, errors may be identified and as part of that, there needs to be a process with HMRC to correct that error. Overall, the key point is noting that errors can be detected anytime, but certainly, life events can prompt this and can be at times in which you wouldn't naturally expect the errors to arise.

Alexis: So what do expect this to look like moving forward, this sort of this area?

Tom: So it's always difficult to know exactly what the landscape will look like in the future. However, we do know that the direction of travel is that detection of errors are increasingly likely due to increases in technology, international cooperation, and increased investment in HMRC, and that this is an increasingly evolving area. So we are increasingly seeing HMRC now look to allege more serious behaviours or take a more serious starting point where errors occur by professionals and professional businesses, particularly more so than we would have done historically and this is also likely to continue too. Overall, it's safe to expect greater scrutiny going forwards and therefore its important for such taxpayers to be prepared for this.

Alexis: And so in order to navigate this then, do you have any top tips or advice for professional taxpayers who have a dispute with HMRC or an investigation going on?

Tom: Yeah, absolutely. in terms of having gone through the points discussed, I think top tips are, firstly, it's important to get overarching advice, which considers both the tax issues and the strategy for resolving that dispute. I think it's important to get ahead. So where you know there is an error, be on the front foot and take it to HMRC without HMRC first coming to you. It's always easier to lead the narrative and any penalty position will always be better in such a case. Be consistent. So if you've made an error and need to notify your regulator or some other agency, as well as HMRC, make sure that you're telling the same story across those conversations if you found an error, check the wider position too, to ensure that there aren't any additional errors, as HMRC will expect you to make a full disclosure, which covers all known errors and they are less likely to carry out further checks or ask a long list of questions if you can demonstrate that you've been robust in checking and/or reviewing your position. And finally, I think it's important to also think about risk and governance too, if you're able to do so. So speak with your advisor in relation to whether they could undertake a mock enquiry or undertake a risk and governance review of your business. This could help to highlight any risks or concerns within your tax position.

Alexis: Well, I'm afraid that's all we have time for today, folks. Thank you again to Tom for today's podcast.

As ever, a big thank you goes to RPC's in-house team for the production, music and sound editing of this episode.

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