



TAXREP 59/13

(ICAEW REP 174/13)

ICAEW TAX REPRESENTATION

9 December 2013

HMRC letters to encourage tax compliance

Text of an email sent on 9 December 2013 to HMRC to set out the concerns of ICAEW agents about HMRC letters to encourage taxpayer compliance being sent to their clients

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INTRODUCTION

1. We welcome in principle the initiative to encourage taxpayer compliance with the use of nudge letters. However these letters have also been sent to represented taxpayers and this represents a significant challenge to tax agents, particularly as the agent was not even copied on the letter sent to the taxpayer.

WHO WE ARE

2. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
3. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
4. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

TEXT OF THE EMAIL

5. We welcome in principle the initiative to encourage taxpayer compliance with the use of nudge letters. However these letters have also been sent to represented taxpayers and this represents a significant challenge to tax agents, particularly as the agent was not even copied on the letter sent to the taxpayer.
6. This short paper sets out how we see the issues from all sides and sets out our recommendations.

From HMRC perspective

HMRC's 'nudge' technique

7. Nudge theory is applied to change the behaviour of the recipient (of the nudge) by 'gentle encouragement' usually by a carefully timed reminder or nudge. This might take the form of a letter, email or targeted advertising. It is usually regarded as best applied by being directed at the individual recipient in a personal way, and we understand that the NHS is successfully using text messages to nudge patient behaviour. However, that is a bilateral relationship and is completely different to the case where there is a third party involved.
8. Government is encouraging departments to use nudge techniques, and it is understandable that HMRC wishes to deploy this method of prompting compliant behaviour. In principle we think it is reasonable to use such techniques in cases where agents are unrepresented.

How the nudge technique affects the client/agent relationship

9. In reviewing the use of nudge techniques directed at represented taxpayers, HMRC should bear in mind that technically the use of nudge will often be inappropriate as the behaviour encouraged would not in reality be displayed by the taxpayer. When a taxpayer has a good relationship with his professional agent, he will normally expect the agent to do everything that is required to ensure his compliance with tax law, and only to involve him when his personal intervention is necessary, such as reviewing and approving accounts or a tax return. Indeed, under the contract between the taxpayer client and his agent set out in the letter of engagement, the agent will normally state that this is his obligation. As such, the use of nudge

letters to represented taxpayers is in our view an incorrect application of nudge techniques – the agent is in effect being paid to act as the nudge to ensure compliant behaviour.

From the taxpayer's perspective

10. The receipt of a nudge letter by a represented taxpayer is likely first to prompt a concern that HMRC has written direct to the taxpayer, rather than his agent, about a matter he would normally regard as 'the agent's work'. This may be followed by concern that the agent has in some way overlooked something that needs to be done, and thus HMRC has needed to contact the taxpayer to raise this issue. This is an understandable reaction by a taxpayer who believes that his agent handles his tax affairs and will contact his client if anything needs to be done. The perception is that the agent has done something wrong.

From the agent's perspective

11. The primary concern with using this approach is the potential damage to the agent/client relationship. Given that this forms the bedrock of the tax system and the role that agents play in supporting compliance, this is wrong in principle: HMRC should be looking to support agents in their work rather than apparently calling into question the agent's professional ability in the eyes of the client. Given this concern, the approach increases burdens and costs as agents will seek to reassure clients that all is well and they have nothing to worry about. The results from the non domiciled exercise suggest that this concern is not misplaced:

12. Where the agent has a copy of the nudge letter in advance, he may be able to pre-empt the concerns of his clients by contacting the clients in advance. In the case of the non domiciled taxpayer letters sent this summer, one substantial firm had to launch a damage limitation exercise after the event, by writing to every non domiciled client to reassure them that their tax affairs are in order. A significant number of clients also had to be contact by telephone to reassure them that their affairs were in order, and this involved considerable resources for no benefit to HMRC, the client or the tax agent.

Conclusions

13. We can see the merits of using the 'nudge approach' on unrepresented taxpayers and believe that this should continue. However, for represented taxpayers there appears to be little benefit to HMRC of using nudge techniques. Further, the potential commercial damage caused to the agent/client relationship is more likely to reduce rather than improve tax compliance and increases costs for no obvious benefits. We welcome the formation of the joint HMRC and professional body protocol group to review and recognise the role of an agent in the tax system and recommend in the meantime that

- As a general policy nudge letters should not be sent to represented taxpayers. An agent's role is to act on behalf of the client to ensure proper tax compliance and these letters should not therefore be necessary.
- If HMRC has concerns about the performance of a particular agent that appears to be putting compliance at risk then it should address this problem separately through a more targeted risk assessment based approach.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx))