MOORE STEPHENS

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Update

Tax investigations

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Maximising Time To Pay potential

Time To Pay (TTP) agreements, since first becoming available in 2008, have enabled both business and personal taxpayers to agree with HMRC additional time to settle their tax liabilities.

Although HMRC has said it has not altered the criteria used when deciding whether to agree a TTP arrangement, the level of successful applications has reduced significantly. So how can taxpayers maximise their chances of gaining a TTP agreement and getting the best terms?

1. Act early

If any business or individual taxpayer fears they may have difficulty meeting future tax liabilities, take action early. HMRC will almost certainly look more favourably at TTP applications made prior to a tax debt becoming due, as opposed to applications made when the taxpayer has already defaulted.

Acting early has other potential benefits. The agreement of a TTP arrangement does not prevent the application of interest, which will always be charged by HMRC on any overdue tax liabilities. However, if the TTP arrangement is in place before a tax liability becomes due for payment, it will avoid any surcharges and penalties that would otherwise be incurred.

2. Present a good case to HMRC

The business case should be based on fact, explaining why the taxpayer can't pay the tax liabilities immediately – so that HMRC has no reason to suspect it is dealing with a 'won't pay' customer. For example, if a business is experiencing cashflow difficulties, it must be able to show that it has explored every avenue to raise the funds needed to pay its tax bills before approaching HMRC. If the business has taken no action to try and find the necessary cash, its TTP application may receive short shrift. Similarly, if a taxpayer simply appears to be treating HMRC as a low-interest lender, a TTP application is highly unlikely to succeed.

The greater the amount of tax involved, the more closely HMRC will look at the taxpayer's affairs. TTP agreements are only available to what HMRC describes as 'viable customers', those that will have the means to pay the taxes included in the TTP arrangement and any other taxes falling due during the TTP period. If a business is seeking a TTP agreement in relation to liabilities exceeding £1m, HMRC may ask for an independent business review to be conducted, to assess the company's financial position. Individual taxpayers seeking TTP arrangements for substantial sums may need to provide details of their income and expenditure as well as personal assets.

3. Stick to your TTP terms

Once a TTP agreement is in place, it is important to stick to it. However, if this begins to look unlikely, talk to HMRC before any default occurs. As before, early contact with HMRC is more likely to win its support and a potential adjustment in payment terms.

On the other hand, if a taxpayer does default and fail to meet the TTP terms agreed, HMRC is more likely to rip up the agreement and begin court proceedings to recover the total tax liabilities due. HMRC action is the biggest trigger for businesses being wound up in the UK. Individual taxpayers cannot expect any greater leniency to be shown. HMRC will take action if necessary, even if that means personal bankruptcy.

4. Make sure all other tax affairs are in order

While it is essential to meet the terms of the TTP arrangement and make payments on time, other tax liabilities cannot be overlooked as they arise. For a business, for example, if the TTP arrangement covers PAYE liabilities, falling behind on VAT could still jeopardise the arrangement. HMRC will look across the board at all taxes and liabilities and take action on that basis. Legal action could therefore still result even if TTP obligations have been met, but other liabilities have not been settled.

How Moore Stephens can help

As pressure mounts on HMRC to maximise tax receipts, the tax authority appears to be taking a tougher stance in relation to agreeing TTP arrangements. Professional input can help to present a strong case. Furthermore, it may be possible to agree settlement of the tax liabilities over a longer period. HMRC's default position is to offer a maximum six-month settlement period, and HMRC says that TTPs lasting over a year are only agreed in 'exceptional' cases. Nevertheless, experience shows that it is possible, by going through additional processes, to achieve a longer TTP period, potentially even lasting up to five years.

We have extensive experience of negotiating with HMRC, and have succeeded in agreeing TTP arrangements even where there has been one or more previous refusals. We are able to assist with your discussions with HMRC, as well as helping the preparation of robust financial information to present to HMRC. If you would like to discuss TTP arrangements, please call Dominic Arnold on the number below or get in touch with your usual Moore Stephens contact.

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