

COMPLIANCE CHECKS: TIME LIMITS FOR DISCOVERY ASSESSMENTS

Discovery Assessments – Schedule 39 FA2008

Self assessed taxes require taxpayers to complete a return by a due date. HMRC then have statutory rights to open an enquiry into that return within certain specified statutory periods (12 months in the case of income tax, 9 months in the case of SDLT etc). If the self assessment is incorrect, HMRC have powers to assess, or correct the self assessment, and recover the underpaid tax.

There are some circumstances in which further assessments, (known as discovery assessments) can be raised by HMRC. This (according to HMRC) usually happens when tax is under-assessed because of fraud or negligence (deliberate or careless in new terminology) by the taxpayer.

It can also happen, however, if the taxpayer does not provide enough information for the inspector to realise, within the enquiry period, that the self assessment is insufficient.

Principles regarding insufficiency

The legislation which amends the time limit for discovery assessments does not alter the principles set out in the Court of Appeal decision of *Langham -v- Veltema 2004 STC 544* (as explained in SP1/06 – Self Assessment: Finality and Discovery) and the Tribunal decision of *Corbally-Stourton (SPC00692 of 2008)*.

In the latter case it was said that (at para 59):

"The inspector may raise an assessment under Section 29 only if:

(i) he newly comes to the conclusion that it is probable that there was an insufficiency; and

(ii) at the relevant time an officer of the Board could not reasonably have been expected, taking into account the general knowledge and skill that might reasonably be attributed to him, and on the basis only of the Section 29(6) information, to have concluded that it was probable that there was insufficiency.

And I note that the test is objective awareness of "an officer of the Board" not the objective awareness of the inspector who may the assessment."

Time limits – Not SDLT

Set out below is a table of the existing new time limits for the taxes affected by the changes in 2009/2010 within which discovery assessments can be made for direct and indirect taxes.

The new time limits for these taxes bite with effect from 1 April 2010.

	Income Tax and CGT	Corporation Tax	VAT	New
Assessments and claims	5 years and 10 months	6 years	3 years	4 years
Assessment – careless behaviour	5 years and 10 months	6 years	3 years	6 years (4 years for

				VAT)
Assessment – deliberate behaviour	20 years and 10 months	21 years	20 years	20 years
Assessment – failure to notify	20 years and 10 months	21 years	20 years	20 years
Assessment – undisclosed avoidance scheme	20 years and 10 months	21 years	20 years	20 years

The four and six year periods under the new regime will apply for all taxes other than VAT (in which case the six year assessment window where a taxpayer has been careless is reduced to four years). What comprises carelessness is not set out either in statute nor in the guidance but is likely to be dealt with in accordance with the same principles that apply to carelessness for penalties for inaccurate returns.

Deliberate behaviour is the equivalent of fraud and is where "*a person does any act or omits to take any action, and his conduct involves dishonesty*". (Extract from HMRC compliance handbook)

Transitional arrangements

There are transitional arrangements designed to ensure that where, for example, the window is extended for VAT from three years to four years, periods which would have fallen out of account under the three year regime are not brought back into account simply because of the extension to four years.

These transitional arrangements only apply for discovery assessments raised between 1 April 2009 and 1 April 2010.

SDLT

The position for SDLT and other taxes which are affected by the changes in 2010 and 2011 is set out below, as it was recently clarified in Budget Notice 89. The new regime will apply to SDLT with effect from 1 April 2011. Before 1 April 2010 the existing regime will apply. Discovery assessments raised between both April 2010 and April 2011 will be subject to transitional arrangements.

Current time limits

Tax	Claims	Mistake	Careless	Deliberate
Environmental taxes: (aggregates levy; climate change levy and landfill tax)	3 years	3 years	3 years	20 years
Insurance premiums tax	3 years	3 years	3 years	20 years

Stamp duty land tax	6 years	6 years	21 years	21 years
Stamp duty reserve tax	6 years	6 years	6 years from date fraud or negligence comes to HMRC's knowledge	
Petroleum revenue tax	5 years 10 months	5 years 10 months	20 years 10 months	20 years 10 months
Inheritance tax	Varied	6 years from the date when the (last) payment of tax was made, or the date when fraud, default or neglect comes to HMRC's knowledge		

Proposed aligned time limits

Tax	Claims	Mistake	Careless	Deliberate
Environmental taxes: (aggregates levy; climate change levy and landfill tax)	4 years	4 years	4 years	20 years
Insurance premiums tax	4 years	4 years	4 years	20 years
Stamp duty land tax	4 years	4 years	6 years	20 years
Stamp duty reserve tax	4 years	4 years	6 years	20 years
Petroleum revenue tax	4 years	4 years	6 years	20 years
Inheritance tax	4 years	4 years	6 years	20 years

Time limits for taxpayer's claims will also be aligned at 4 years.