CHAPTER 15

CONTROL VISITS, APPEALS AND ASSESSMENTS

15.1 Introduction

This chapter looks at how HM Revenue and Customs (HMRC) enforce compliance with the VAT legislation.

Firstly it will consider the way HMRC uses the 'control visit' procedure to monitor the operation of VAT by the taxable person. New rules were introduced from 1 April 2009 to bring HMRC's powers regarding compliance within the same statutory framework for income tax, corporation tax, CGT and VAT. It remains to be seen how much practical difference this will make for VAT as HMRC's powers in this area were already more extensive than for the other taxes. FA 2008, sch 36

15.2 The Control Visit

HMRC officers will periodically visit taxable persons. These visits will be by prior appointment, although HMRC reserve the power to enter and search premises on a warrant granted by a magistrate.

In the past, registered traders could expect their first control visit within three years of registration. Visits are now more targeted and a "low risk" trader may not have his first visit for many years.

Traders who receive cash takings or work in a complicated area might be regarded as "high risk" and as such they can expect regular visits from HMRC.

Control visits will vary in duration depending on the perceived risk factor and the size and complexity of the business.

In addition, a trader who sends in a late VAT return, or VAT returns that are incorrect or inconsistent, can also expect to be visited more frequently than would perhaps otherwise be the case.

The control visit usually takes place on the business premises and HMRC will inspect the accounting records of the trader. They will also test the accuracy of VAT returns that have been submitted so far.

A control visit **cannot be regarded as an audit**. The fact that a control officer does not discover any errors does not equate with giving the business a clean bill of health.

The purposes of a control visit are wide ranging. The primary objective of the control visit is to ensure that the full amount of VAT due has been properly accounted for. The records of the business and also the activities carried on by the business will be scrutinised by the control officer.

The control officer will also discuss various aspects of the business with the taxable person. If a trader uses the opportunity afforded by the control visit to seek the advice of HMRC on particular issues, then the trader must ensure that any advice on which he is going to rely is confirmed in writing.

The control officer will also discuss any VAT problems that the business may be experiencing and perhaps may offer advice on how to cope with these. Once again, such advice needs to be in writing.

Finally, the control officer will highlight any errors that have been found during the control visit and will explain what happens next and how the business should act to correct them.

If under-declarations of VAT come to light during the visit, the control visit will be followed by the issue of an assessment and interest and penalties may be charged.

15.3 Examination of records

A control visit will normally take place at **the trader's main place of business**. This is so that the officer can examine the business records, and can also have a look at the business activities carried on.

All of the records which the trader is obliged by law to keep should be made available. If any records are not kept at the main premises, HMRC should be so informed at the time that the appointment is made for the control visit. HMRC can then outline which of the remote records the control visit officer will need to examine.

Where records are held on computer, the trader is obliged to give the officer assistance in assessing those records.

A taxable person is liable to penalties if he fails to provide information or documents demanded or if he fails to retain records that he is required by law to keep.

The person who is responsible for dealing with all the VAT affairs of the business should be available whilst the control officer is conducting the control visit. The trader's accountant, or other professional adviser, may also be there if the trader feels this would be helpful.

The procedures followed during the control visit vary according to the nature of the business, but if lots of cash transactions are carried out in the business then it is likely that the **control officer will carry out a gross profit calculation or a mark-up computation**. Control officers use a number of techniques to test the credibility of output tax figures and, especially in retail trades, a popular credibility check is the "mark-up" computation.

A "mark-up" computation makes use of the known value of purchases. These are obtained from the tax invoices retained as evidence of an input tax credit. It also uses the profit margin mark-ups that are made on each of the various types of goods sold.

The control officer will use this information to estimate the value of sales in a period and hence the value of output tax that should have been accounted for. This will be compared to the actual output tax accounted for and if a large difference occurs, further investigation will be needed.

15.4 Assessments

A control officer will issue an assessment where it appears that a VAT return has not been submitted, or if it has been submitted, it is incomplete or incorrect. The assessment must be made "to the best of the Commissioners' judgement". VATA 1994, s.73 (1)-(3)

An assessment must be raised by the later of; VATA 1994, s.77

- Two years after the end of the prescribed accounting period in question; or
- One year after evidence justifying the raising of an assessment comes to light.

There is also an overall time limit. This overall time limit for the issue of an assessment states that an assessment must be issued not later than four years after the end of the prescribed accounting period concerned, or where an individual has died, not later than four years after his death.

However, where an underpayment arises from deliberate conduct, the four-year limit is increased to twenty years.

Example 1

During a control visit on the 29th January 2011, the HMRC Officer discovers an under-declaration of output VAT on the VAT return to the quarter 31st March 2010.

By which date must a Control Officer raise an assessment to collect the VAT due?

15.5 Appeals

The appeals process changed from the 1st of April 2009. A new tribunal has been set up to deal with **all tax appeals**. Therefore, the new tribunal will not only hear appeals concerning VAT but other direct taxes as well. Initially appeals against VAT decisions will be made to the **tax chamber of the 'First-tier' tribunal.**

An **'Upper tribunal'** will **hear appeals on more complex matters** and **appeals from decisions of the First-tier tribunal.**

Two main statutory instruments govern the function of the tribunals and the rules procedure. SI 2009/196 SI 2009/273

In the event of a dispute with HMRC, there are still two routes open to resolve the issue in question. In most cases the taxpayer will ask HMRC to reconsider their decision. Going forward this will simply be called a **review.** VATA 1994, s.82-87

HMRC should carry out this review within 45 days or such longer period as is agreed with the taxpayer. Now if this course of action is chosen, the request should be made **in writing within 30 days of the disputed assessment** and relevant information should be provided to HMRC to back up the case for review. Notice 700 Paras 28.2, 28.5

This does not prejudice the trader's right to appeal to the First-tier Tax Tribunal if he disagrees with the outcome of the review. If the taxpayer disagrees with the outcome of the review he can **appeal to the tribunal within 30 days.**

The second route is to **appeal the decision direct to the tribunal** without first requesting a review. The **appeal should be made within 30 days of the original disputed decision.**

A significant change with effect from 1 April 2009 is that **costs are not generally available in the First-tier Tax Tribunal unless it is decided by that Tribunal that one party has acted 'unreasonably'**. In complex cases however costs will usually be awarded.

If the taxpayer believes that the First-tier Tax Tribunal has made a mistake in law, it can seek permission to appeal to the Upper Tribunal.

15.6 Appealable Matters

It is only possible to appeal in respect of certain matters which include the following: VATA 1994, s.83

- Registration or cancellation of a registration;
- Refusal of a group registration application;
- Assessment for VAT and/or assessment for penalties;

- The VAT that is chargeable on a supply of any goods or any services;
- The input tax that can be reclaimable by a taxable person;
- The use of special schemes including retail schemes, cash accounting, flat rate for farmers' scheme etc.

The major disadvantage of an appeal is that it can be a lengthy procedure, particularly if it then becomes a case that is pursued to the Upper Tribunal and to higher courts.

In addition, pre-payment of the disputed tax is often a requirement and the appeal hearing is public which can lead to unnecessary, perhaps unwanted, publicity.

In practise it is probably the cost of an appeal that is the major deciding factor in whether a trader goes ahead or not. This is especially so if the case on which the appeal is being made is not a rock-solid one.

15.7 Procedure

The new tribunal will consist of **legally qualified** and **non-legally qualified** persons. They will be called '**judge of the First-tier tribunal'** and '**members of the First-tier tribunal'** respectively.

Once an appeal is lodged, the **tribunal will allocate the case to one of four categories**.

These categories are as follows:

'**Default paper cases'**	These will usually be **disposed of without a hearing**;
'**Basic cases'**	These will usually be disposed of after a hearing, with **minimal exchange of documents** before the hearing;
'**Standard cases'**	These will usually be subject to **more detailed case management** and be disposed of after a hearing; and
'**Complex cases'**	where the tribunal considers that the **case will require lengthy or complex evidence or a lengthy hearing;** or that it involves a complex or important issue or that it involves a large financial sum. If it is a complex case then it may be transferred to the 'Upper tribunal.'

Decisions of the tribunal may be given orally at the hearing. A **written decision must be given to the parties within 28 days** after the decision has been made.

A **decision of the 'Upper tribunal' is binding on lower tribunals**, for example, its decisions will bind the First-tier tribunal.

A **right of appeal no longer exists to the High Court**; it can now be made to the Upper Tribunal if permission is given by the First-tier tribunal. The decision of the appeal body on questions of **fact** is final. From the Upper Tribunal the appeal can proceed, if necessary, to the Court of Appeal and then, to the House of Lords.

Example 2

Tick the statements which are correct. Here is a clue – only 3 of the 6 statements are true!

		If correct
	Tick the correct statements:	✓
1.	Control visits are effectively an "audit" of the trader's VAT records.	☐
2.	Control visits take place at the trader's business premises	☐
3.	Assessments are made to the best of the trader's judgement.	☐
4.	The normal time limit for an appeal against an assessment is 30 days after the assessment was issued.	☐
5.	Costs are always awarded to a successful appellant.	☐
6.	The right of appeal to the Upper Tribunal can only be made on "a point of law".	☐

Answer 1

The correct date is 31 March 2012.

The later of:

(i) 2 years after the end of prescribed accounting period in question 31.3.10 + 2 = 31.3.12

(ii) 1 year after evidence justifying an assessment comes to light 29.1.11 + 1 = 29.1.12

Later of 2 dates = 31.3.12

4 year overall limit

4 years from end of PAP in question
31.3.10 + 4 = 31.3.14

When considering the 4 year overall limit of 31st March 2014, the 31st March 2012 date calculated earlier is well within this 4 year overall time limit so 31st March 2012 will be the latest date by which an assessment must be raised by the control officer.

Answer 2

1.	Control visits are effectively an "audit" of the trader's VAT records.	X
2.	Control visits take place at the trader's business premises	✓
3.	Assessments are made to the best of the trader's judgement.	X
4.	The normal time limit for an appeal against an assessment is 30 days after the assessment was issued.	✓
5.	Costs are always awarded to a successful appellant.	X
6.	The right of appeal to the Upper Tribunal can only be made on "a point of law".	✓