

2.2.5 Notice regarding unknown taxpayer

Identity unknown notice

HMRC have power to give notice in writing requiring a person to provide information or produce a document if it is *reasonably* required for checking the tax position, or collecting a tax debt, of a person whose identity is unknown, or a class of persons whose individual identities are unknown (an “identity unknown notice”). The power is exercisable only by an authorised officer (see **2.2.2**), and, with certain exceptions mentioned below, only with the approval of the tribunal, which must satisfy itself that:

- the notice is reasonably required for checking the tax position of the unknown person(s);
- there are reasonable grounds for believing that the unknown person(s) may have failed or may fail to comply with any provision of UK tax law or the tax law of a territory outside the UK;
- such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax; and
- the information or document to which the notice relates is not readily available from another source.

The tribunal’s approval is not obligatory where the notice relates to a pensions matter (see **2.2.3**) or is served on one of the partners in a partnership for the purpose of checking the partnership tax affairs of another partner whose identity is unknown.

Identification notice

From 17 July 2012 the power was extended to enable an authorised officer to issue an “identification notice”. This requires a person to provide “relevant” information (i.e. the name, last known address and date of birth) of a taxpayer whose identity the officer does not know but has reason to believe could be ascertained by the person on whom notice has been served. For example, if HMRC have a credit card number an authorised officer can ascertain the name of the account holder from the credit card company. The power does not extend to requiring the production of documents.

For the power to be validly exercised, it is also necessary that the information must be reasonably required by the officer for the purpose of checking the tax position of the taxpayer, and that the recipient of the notice obtained the relevant information about that taxpayer in the course of carrying on a business.

This extension of the power can be used to check the tax position of a taxpayer as regards periods or tax liabilities whenever arising, whether before, on or after 17 July 2012, and can be exercised without the approval of the tribunal.

Appeal against identity unknown or identification notice

The recipient of an identity unknown notice or an identification notice may appeal against it to the tribunal, or against any requirement it contains, on the grounds that it would be unduly onerous for the person to comply with the notice or requirement.

The recipient can appeal on any grounds if the notice relates to a pensions matter (see **2.2.3**) or to the partnership tax affairs of a partner of the recipient of the notice. That is to say, the grounds of appeal do not have to be restricted to the fact that compliance with the notice would be unduly onerous.

Law: FA 2008, Sch. 36, para. 5, 5A, 31, 37; FA 2021, s. 127(4), (5)

2.2.6 Appeals against information notices

As noted at **2.2.2 to 2.2.5**, as the role of the tribunal in respect of information notices is more monitoring than appellate, appeal rights are limited. Appeals, where available, lie to the First-tier Tribunal, whose decision is final – there is no onward right of appeal to the Upper Tribunal (*Jordan*).

Notice of appeal must be given in writing to the officer who issued the notice, stating the grounds of appeal, before the period of 30 days beginning with the date on which the notice is given (the date of issue).

On appeal, the tribunal may:

- confirm the information notice or a requirement in the notice;
- vary the notice or requirement; or

- set aside the notice or requirement.

Where the notice or requirement is confirmed or varied, the recipient of the notice must comply with it within such period as is specified by the tribunal, or, if the tribunal does not specify any such period, within such period as is *reasonably* specified in writing by an HMRC officer following the tribunal's decision.

In cases where there is no right of appeal (e.g. where the tribunal has given prior approval to the giving of the notice) the only recourse is by way of judicial review.

Law: FA 2008, Sch. 36, para. 6(4), 32

Case: *Jordan v HMRC* [2015] UKUT 218 (TCC)

2.2.7 No appeal against production of statutory records

There is no right of appeal against any requirement to produce statutory records.

Information or a document forms part of a person's statutory records if the person is required by the Taxes Acts to keep or preserve it. For example, for self-assessment purposes, a person is required to keep and preserve such records as may enable him to make a full and accurate return. It is as well to err on the side of retention as penalties for not keeping statutory records can be high (maximum £3,000).

Information and documents which must be kept for tax purposes, and which relate to the carrying on of a business, become statutory records from the start of their existence. Other such documents only become statutory records in the chargeable periods following the period to which they relate. They cease to be statutory records when the period for which the person is obliged to keep and preserve them expires.

Disputes

The recipient of a notice requiring statutory records to be produced can of course dispute whether the documents requested are indeed statutory records. The burden of proof is on HMRC to show that the statutory records requested from the taxpayer are "reasonably required", but once HMRC have discharged that burden, the onus shifts to the taxpayer to show that the records in question are not statutory records (*Metropolitan International Schools*). In order to

prove that the statutory records requested are reasonably required, HMRC must show that they are “relevant to the issues that have prompted the enquiry and ... capable of enabling the officer to check the tax position” (*ibid.*, at para .21).

If agreement on the point cannot be reached with the HMRC officer, there are two options open to the taxpayer:

- appeal against the notice, with a view to proving that the records requested are not statutory records; or
- wait for a penalty to be charged for non-compliance with the notice, then appeal against the penalty notice.

Otherwise, as there is no right of appeal against any requirement to produce statutory records, the only legal recourse is by way of judicial review; alternatively the taxpayer can pursue an official complaint (see **7.7.1**) or alternative dispute resolution (see **6.4**).

Law: FA 2008, Sch. 36, para. 62

Case: *Metropolitan International Schools v HMRC* [2021] UKFTT 438 (TC)

Guidance: CH 21700

2.2.8 Rules against disclosure of third party or financial institution notices

HMRC can apply to the tribunal for permission not to give a copy of a third party or financial institution notice to the taxpayer to whom it relates. If the application is granted, the recipient of the notice is prevented from disclosing it to the taxpayer. In such cases, the notice may contain a requirement not to disclose it or anything related to it to the taxpayer, or to any other person except for a purpose relating to compliance with the notice, for a period of 12 months. That period may be extended, or the notice withdrawn, by or with the agreement of an authorised officer of HMRC (see **2.2.2**). Where the notice is being extended, the HMRC officer must have reasonable grounds for believing that not to extend it might prejudice the assessment or collection of tax.

The penalty if the recipient of a third party notice or FIN breaches any such non-disclosure requirement is £1,000. HMRC must assess the penalty within 12 months of the breach first coming to their attention. There is a right of appeal against the penalty.

Law: FA 2008, Sch. 36, para. 51A, 51B, 51C; FA 2021, s. 128 and Sch. 34, para. 2