

Date of this help sheet: 15 May 2020

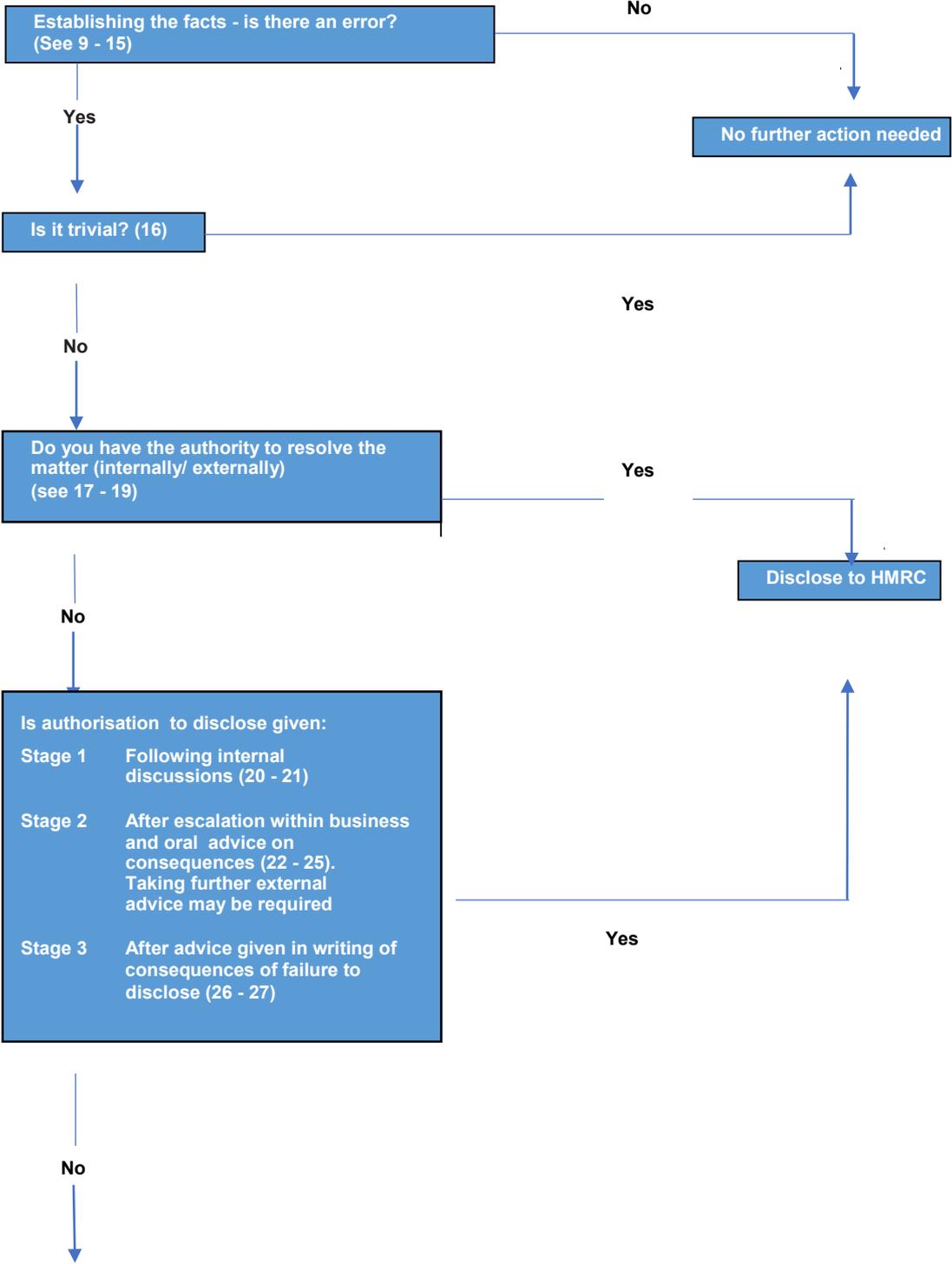
PCRT Helpsheet C2: Dealing with errors – Members in business

This help sheet provides guidance on the application of the PCRT Fundamental Principles and Standards for Tax Planning when dealing with errors that arise in tax. This includes establishing the facts, whether employer authorisation is needed to disclose an error and actions to take where an employer refuses to disclose. This helpsheet applies to members in business, which includes employees attending to the tax affairs of their employer, and members in practice dealing with their business's tax affairs.

Introduction

1. 'Errors' is intended to include all errors and mistakes whether made by the member, senior colleagues (including the Senior Accounting Officer (SAO) where relevant), junior colleagues, an external adviser, HMRC or any other party involved in the business's tax affairs or tax accounting records.
2. In the course of a member's work, the member may become aware of possible errors in the business's tax affairs. Unless already aware of the possible errors, senior colleagues should be informed as soon as the member has knowledge of the error where it is possible to do so.
3. Where there is an error which has resulted in the business paying too much tax the member should work with colleagues and the company's professional advisers in making a repayment claim and have regard to any relevant time limits. With the exception of this paragraph and paragraph 18, the rest of this section on errors deals solely with situations where sums may be due to HMRC or there are inaccuracies in the SAO's certificate on tax accounting arrangements (where the business comes within the SAO regime).
4. On occasions it may be apparent that an error made by HMRC has meant that the business has not paid tax actually due or has been incorrectly repaid tax. Correcting such mistakes may cause expense to a business. A member should bear in mind that, in some circumstances, businesses or their agents may be able to claim for additional professional costs incurred and compensation from HMRC. See HMRC's complaints factsheet.
5. A member must act correctly from the outset. A member should keep sufficient and appropriate records of discussions and advice, and when dealing with errors the member should:
 - Give colleagues within the business appropriate advice;
 - If necessary, seek to persuade colleagues to behave correctly;
 - Take care not to appear to be assisting colleagues or business advisers to plan or commit any criminal offence or to conceal any offence which has been committed; and
 - In appropriate situations, or where in doubt, discuss the situation with a colleague or an independent third party (having due regard to confidentiality).
6. Once aware of a possible error, a member must bear in mind the legislation on money laundering, any other reporting requirements and the obligations and duties which this places upon them where the business is within the regulated sector.
7. In any situation where a member has concerns about their own position, they should take specialist legal advice. This might arise, for example, where colleagues appear to have used the member to assist in the commission of a criminal offence in such a way that doubt could arise as to whether the member had acted honestly and in good faith.
8. The example flowchart summarises the recommended steps a member should take where a possible error arises. It must be read in conjunction with the guidance and commentary that follow it.

STEPS TO TAKE IF THERE IS A POSSIBLE ERROR



Establishing the facts

9. Although a member is not under a duty to make enquiries to identify errors which are unrelated to the work they are involved with in a business, if they do become aware of any error in the business's tax affairs or tax accounting records they should follow this guidance, whether in relation to a matter on which they have worked or not.
10. A member who suspects that an error may have occurred should discuss this with senior colleagues or the SAO (where relevant) to remove or confirm the suspicion. They should take into account the fact that they may not be aware of all the facts and circumstances and may not, therefore, be able to reach a definitive conclusion.
11. If the error concerns the accounts but is not material from an accounting perspective it will usually be the case that no adjustment is needed, and no further action is required. See 3.8-3.10 of Professional Conduct in Relation to Taxation. However, it should be borne in mind that what is or is not material should be tested against the materiality level for the relevant solus accounts and not the materiality level for the group accounts, if the entity is part of a consolidated group. Further, HMRC do not as a rule automatically accept that matters below the level of accounting materiality are to be considered immaterial when applying tax rules and considering whether accounting systems are appropriate under the SAO rules. Consideration should therefore be given as to whether adjustments and / or disclosures should be made to ensure tax rules including SAO requirements are met, even if the error relates to an item considered "immaterial" from an accounting or audit perspective.
12. Where colleagues or an external adviser provides an explanation for the apparent error to the satisfaction of the member, the member can continue with their work without considering the matter further.
13. Where an explanation of the apparent error is not given to the satisfaction of the member, the member should consider whether it is appropriate to escalate the matter and raise it with more senior colleagues. They should monitor the position carefully. Should it later become apparent that there is an error despite previous assurances received to the contrary the member should follow the advice in the flowchart above.
14. If a member is in doubt as to whether there is an error the member should consider seeking specialist advice from sources such as external advisers, sector forums and professional bodies. Likewise, correcting more serious errors can require specialist help where again assistance may be required. In some situations, the member may wish to seek a second opinion on technical advice provided by external advisers.
15. The member should protect their position and record their compliance with this guidance by documenting:
 - The discussions they have had internally within the business, any colleague, specialist and/or HMRC;
 - Explanations provided to them;
 - Their conclusion and the reasons for reaching that conclusion.

(See 28)

Consult internal whistleblowing procedures where they exist

Consider making a report to the Money Laundering reporting officer in a regulated business

Consider taking legal advice

Consider willingness to be associated with the business at whistleblowing procedures where they exist

It may be appropriate to confirm the facts in writing with a senior colleague or external advisers.

Is the error trivial?

16. As a general principle all known errors should be corrected (save for non-material adjustments as described above). In the opinion of the professional bodies it is reasonable for a member to take no steps to advise HMRC of isolated errors where the tax effect is no more than minimal, say up to £200, as these will probably cost HMRC and the business more to process than they are worth to the Exchequer.

What are the business procedures associated with disclosing the error?

17. A member must ensure that they have authority to disclose an error to HMRC or to discuss it with external professional advisers. They should refer to internal business procedures where relevant. If in any doubt or if the amount of tax involved is material the member should confirm the position with the SAO where there is one, or with other appropriate internal colleagues.
18. A member must have the authority to agree a negotiated figure following disclosure of the facts and circumstances. A member cannot agree a figure that they know contains an error.
19. In all cases where HMRC has sent an over-repayment to the business it must be returned to HMRC as soon as practicable. A member must deal with matters based on business procedures and cannot act without the necessary authority.

Stage 1: Discuss matters internally to agree authority to disclose

20. Subject to the circumstances set out above, the member should consult internally requesting authority to notify HMRC of the error. A member should advise internal colleagues about the need to make a timely disclosure, and advise colleagues of the business's obligations under the relevant tax legislation, referring, as relevant, to interest, surcharges, penalties and the rules concerning the delayed correction of innocent errors.
21. Colleagues may not agree with the member's advice and the member should then take the further steps detailed below:

Stage 2: Escalating the matter within the business

22. Where it appears that colleagues are reluctant to agree to authorise disclosure of the error to HMRC, the member should escalate the issue within the business and refer to more senior colleagues. It may be appropriate to consider again whether to seek to specialist advice and /or a second opinion.
23. The member should explain to colleagues:
 - The potential consequences of non-disclosure;
 - The benefit of making a voluntary disclosure especially as regards reduced penalties; and
 - The wide-ranging powers available to HMRC to obtain information from taxpayers, their agents and third parties.
24. This will also include the member explaining that they will be required to put their advice that disclosure is required in writing.
25. If, having followed this approach there is continued reluctance to authorise disclosure to HMRC, the member should follow the actions in stage 3 below.

Stage 3: Advising senior colleagues in writing of the consequences of failure to disclose

26. Where senior colleagues remain unwilling to make a full disclosure to HMRC the member should ensure that their conduct and advice are such as to prevent their own probity being called into question. It is essential therefore to advise colleagues in writing, setting out the facts as understood

by the member, confirming to the colleagues the member's advice to disclose and the consequences of non-disclosure.

27. If, after being advised in writing, the colleagues prevaricate about making a full disclosure, the member must consider at which point the prevarication should be treated as a refusal to disclose.

Actions where there is a refusal to authorise disclosure

28. If, despite being fully advised of the consequences, there remains a refusal to authorise appropriate disclosure to HMRC, the member must:
- Consult the business's whistleblowing policy where one exists;
 - Consider whether a money laundering report should be made to the business's MLRO / the National Crime Agency in a business within the AML regulated sector;
 - Consider taking specialist legal advice;
 - Consider their willingness to be associated with the business on an ongoing basis.

Other related matters

Corporation Tax or Other Returns

29. Where the error relates to a corporation tax or other return the business must arrange to amend any return affected by the error providing it is within time to do so. Where the time limit for amending a return has passed, the business or its agent should provide HMRC with sufficient and accurate information to explain the error. If HMRC fails, or is unable, to take any necessary action, for example to issue a discovery assessment, a member is under no legal obligation to draw HMRC's failure to their attention, nor to take any further action. Where it is relevant a member should ensure that colleagues within the organisation are aware of the potential for interest and /or penalties.

Decisions of Tribunals or Courts

30. It is possible that after a business has made a return a later (perhaps years later) unrelated decision of the Tribunal or Court may cast doubt on whether the return was made on the correct basis.
31. A member is not under a duty to monitor all returns and all tax cases for many years after the returns have been filed to identify this rare event. However, if the member is aware of such a situation they should discuss with colleagues and / or the business's professional advisers and if deemed necessary, seek specialist advice.

While every care has been taken in the preparation of this guidance the PCRT Bodies do not undertake a duty of care or otherwise for any loss or damage occasioned by reliance on this guidance. Practical guidance cannot and should not be taken to substitute appropriate legal advice.