

Are the Commissioners of HMRC failing to protect the pu...

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Jolyon Maugham has posted the following on his blog today under the heading '[Something is very wrong at HMRC](#)'. I repost it with his permission, because in my opinion if Jolyon is right in the assertions he makes (and I very strongly suspect he is) then in my opinion the Commissioners of HMRC are guilty of misconduct in public office for failing to protect the public revenue, for which I think they should be held personally accountable:

Assume you are a taxpayer who has been underpaying tax for years. The law allows HMRC to collect some of that tax. But it also imposes limits on how far into the past HMRC can go. Underpayments further into the past than the law permits cannot be collected: the taxpayer will get away with having underpaid tax.

What are those time limits? Well, ignoring instances where the taxpayer has been dishonest, they are, in the case of VAT, a maximum of four years — but they may be as few as two.

The formal mechanic by which HMRC collects underpaid tax is an 'assessment'. And because of the time limits, when HMRC discovers a potential underpayment by a taxpayer going back into the past, its practice is to raise an assessment to protect its position. That way, if the potential underpayment does turn out to be an actual underpayment the taxpayer doesn't get away with its underpayment of tax.

Raising a protective assessment doesn't impose any obligation on HMRC to collect the tax. Nor does it impose an obligation on the taxpayer to pay it. It's a protective or precautionary step — simple good practice — to look after the position of taxpayers generally: your position and my position.

Now.

An Employment Tribunal has decided that Uber is supplying transportation services. The consequence of that decision is that Uber should be charging VAT to customers and paying it to HMRC. And that will be true not just now but for the whole period for which Uber has operated in the UK, a period of longer than four years.

An Advocate General at the European Court of Justice has also said Uber is supplying transportation services. And I think those decisions are right. And I am a QC specialising in tax, so this is a view I am entitled to hold. I have also taken formal advice from another QC who specialises in VAT.

If we are right — QC, Employment Tribunal, Advocate General — Uber's VAT liability could very easily exceed £200 million a year.

It is, of course, possible however unlikely that we are all wrong. Uber's appeal against the Employment Tribunal could succeed. The Court might not follow its Advocate General. QCs are not always right.

So what should HMRC do in this situation? If you read the first part of this blog post, you won't find that a difficult question to answer. It should raise protective assessments before the sands of time run out. So as to protect its ability to collect from Uber the VAT that the courts presently suggest Uber must pay.

If we are all wrong, HMRC can abandon those assessments. But if we are right, raising those assessments will mean that Uber does not get away with it. And you and I do not miss out on hundreds of millions of pounds of vitally needed funding for public services.

But by failing to raise protective assessments, HMRC guarantees Uber gets away with it. Even if any remaining doubt about Uber's VAT liability disappears, HMRC will be unable to collect those hundreds of millions of pounds.

Uber says that HMRC has not raised a protective assessment. If Uber is telling the truth — and it has made a sworn witness statement to similar effect — then HMRC's conduct is completely inexplicable. HMRC is simply throwing away, and with no good reason, the chance to collect from Uber hundreds of millions of pounds.

I can see no good reason why HMRC should adopt this stance. None at all. It is inexplicable to me — unless HMRC's conduct is motivated by factors otherwise than collecting the tax demanded by the law. I do not know what those factors might be. But this smells very bad.

I think Jolyin is guilty of understatement, but I'll readily forgive him. I do not do the same of HMRC.