

# ALAN PINK TAX

## You and the Revenue

### I Got the Power

Previously I've written about one aspect of the Revenue's new powers over us all, which are still little understood and are still making waves in the accountancy and legal profession. This was the new enhanced (from the taxman's point of view) ability to require information to be sent. Now we come on to something much more sinister: Hector's powers to visit your premises.

As if all the historical precedent for the dangers of giving the executive, that is civil servants, too much power, had never happened, last year's Finance Act has brought in major new powers for the Revenue in the way of visiting their "customers". There was a lot of talk about counter balancing "safeguards" in the consultation that preceded the new legislation, but precious few safeguards of any kind in reality.

But that's not to say there aren't any, or that you have to bow down before the omniscient powers of a new, KGB style Revenue. What this article sets out to do is tell you exactly what your rights are in the event of you being selected for a visit.

### The New Powers

First, though, a run down of what the new powers actually are. Basically they are power for an officer of HM Revenue & Customs to enter a person's business premises and inspect the premises, business assets that are on the premises, and business documents that are on the premises, if the inspection is reasonably required for the purpose of checking that person's tax position.

There's a superb example of weasel words in the legislation when it comes down to the question of how much notice the taxman has to give you, or whether he has to give you any notice at all, of his visit. The Inspector doesn't have to agree with you an appropriate time for his visit, but can come at any "reasonable time". Do the words in quotation marks, there, mean what they say? Of course not! "Reasonable time" is defined as either a time which he has given you seven days notice of, or any time at all if the inspection has the

agreement of an “authorised officer of Revenue & Customs”. What a great safeguard! Translated into English, that means that he can come at any time at all, whether it’s reasonable or not.

A cynic (and we belong firmly to this category) would say that the word reasonable has only been put into the law, here, to fool MP’s into passing the Act under the mistaken impression that it doesn’t give unreasonable power to the executive over the citizen.

## **Your Rights**

So that’s the new power in a nutshell. Let’s assume that you are one of the unlucky ones, though, and you’ve received an unannounced visit from the Inspector of Taxes, no doubt with a posse of followers, and he is insisting on immediate admittance to turn your whole premises upside down. Can you fight back?

The answer, of course, is “yes”. Here are the key strengths of your position:-

- The taxman does not have the power (unless he has a more old fashioned, formal search warrant) to invade your home. If you use some of your home for the business, he can only enter the part of your house which is used for business. The way we read the legislation, this means that, if he can’t get to the business part of your home without passing through a non business part, he can’t come in at all, although presumably his counter argument might be that the front hall is used partly for business if you walk along it to get to the business part. You should definitely keep him on the doorstep arguing this point vigorously, though.
- The powers only give the taxman the right to “inspect”. This doesn’t mean the right to carry out a search. Don’t let them pull open drawers and look through whatever they find there.
- The taxman only has the right to inspect assets and documents that relate to the business.
- If the taxman comes without warning, he must provide a written notice giving the authorisation of the relevant officer of HM Revenue & Customs. This notice will say whether it has been given with the approval of the Tax Tribunal (see more below on this).

- Whilst the taxman has a right to enter the premises, he hasn't got the right to force entry. This distinction could only have been thought up by a lawyer! What does it mean?

We've read advice from lawyers to the effect that this last restriction on HMRC's powers, that is that they cannot force entry, effectively means that entry should always be refused where the taxman turns up unannounced. This seems good practice, but what reprisals are there for thwarting Hector in this way? It seems that the reprisals are either £300 or nothing depending on whether the visit has been given the formal approval of the Tribunal or not. This is why it's important to look at the written notice that the Inspector has brought with him, because if there's no Tribunal approval, there can be no penalty. Whether it's worth £300 for the pleasure of sending the taxman away with a flea in his ear, in the event that he **has** got the Tribunal's approval, is a matter for fairly rapid decision.

### **Aux Armes, les Citoyens!**

Of course, we don't mean readers to take this heading literally! The law would frown, probably rightly, on your actually shooting these intruders, and even the Sun Newspaper might not wholly approve. But do be aware of your rights, and don't be afraid to keep the taxman and his friends shivering on the doorstep for a few minutes while you take appropriate legal advice. We've obviously concentrated here on situations where the Inspector's visit is unwelcome, sinister, and intrusive, and this arguably doesn't always apply to "routine" VAT and PAYE inspections. The practice is that these inspections continue to happen much along the previous lines, but it's still not the case that you have to actually meet them and talk to them even on these occasions, no matter what they might say in advance.

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