

Sch 36 'marks end of SA as we know it'

Contributed by Daniel Selwood
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New HMRC powers proposed in the Finance Bill could lead to 'the end of self assessment and the enquiry window as we know it', barrister Keith M Gordon has warned.

Schedule 36 will allow the Revenue to request information from a taxpayer before he or she has submitted a return, claimed Mr Gordon, who added that new powers will allow the taxman to demand data not only during an enquiry window but also later, if there is suspicion of a loss of tax.

'In other words,' he said, 'HMRC need not be on the verge of a discovery. They might already know about the underpayment, or they may have simply failed to act during the enquiry window on the information in the return.'

'There need to be no insufficient disclosure, or no fraudulent or negligent behaviour,' Keith told guests at the annual Wyman Debate held by the ICAEW Tax Faculty.

He then went on to argue that the Finance Bill proposes to give HMRC 'more powers than the police' in terms of being able to enter premises.

The constabulary only have the power of entry if they hold a warrant or have a suspect under arrest for a serious offence, noted Keith, who was junior counsel for the victors during the Arctic Systems case in the House of Lords.

However, para 12 of schedule 36 allows HMRC to inspect premises without notice if the occupier has agreed or if an authorised officer wishes to carry out 'or has authorised' and inspection. When prior notice is issued, it need not be in writing.

A taxpayer has no right of appeal against any such inspection, Keith added, saying that if HMRC 'really want to stitch up the taxpayer' they could tell the first-tier tribunal that they believe premises are used by the taxpayer in connection with a business.

They would then receive authorisation for an inspection, turn up when the taxpayer is not present and have only to leave a copy of the notice in a prominent place, or give it to the person who appears to be in charge.

He went on: 'If the taxpayer turns up and finds the officers raiding the property, it might not be unreasonable for the taxpayer to try to assert his or her legal rights. Actually, the taxpayer does not have any such legal rights'.

Simon Norris, head of HMRC's powers review team, insisted that schedule 36 of the Finance Bill includes 37 identifiable safeguards for taxpayers, including the right of a business to refuse a search by visiting tax inspectors.

Meanwhile, the Treasury's Mark Neale, MD of the department's budget, tax and welfare directorate, argued that it was in the interests of HMRC to use 'consistent and transparent' powers that are 'exercised reasonably and within the framework of government safeguards, and not used 'in an arbitrary or unreasonable way'.

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