

HMRC's new disclosure opportunity — a second chance to wipe the slate

Michelle Sloane and **Joanna Sharr**, solicitors at The Khan Partnership, summarise HMRC's new disclosure opportunity

HM Revenue & Customs (HMRC) has launched a new offshore disclosure initiative called the "New Disclosure Opportunity" (NDO), to allow people with unpaid taxes linked to offshore accounts or assets to voluntarily settle their tax liabilities at a favourable penalty rate. The NDO starts on 1 September 2009 and ends on 12 March 2010.

The NDO follows on from HMRC's 2007 Offshore Disclosure Facility (ODF), which led to thousands of taxpayers owning up to undisclosed offshore income resulting in tax recoveries amounting to £400m.

Spurred on by the prospect of further recoveries, HMRC are now expanding their inquiries beyond bank accounts and now wish to investigate other types of offshore accounts, products and structures. The latest tax amnesty is estimated to affect 100,000 investors at more than 500 UK and foreign banks and building societies who are believed to be using offshore accounts. HMRC has said that the tax yield from this new initiative could amount to over £500m over four years.

Over the past few months, HMRC has started to obtain the offshore account details of thousands of individuals from hundreds of financial institutions offering accounts outside the UK. HMRC issued a press release on 12 August 2009 confirming that over 300 institutions have been ordered to provide details about customers that hold offshore accounts.

The Key Features

The main features of the NDO are as follows:

- UK resident individuals, companies or trustees to disclose unpaid taxes linked to offshore accounts and assets and secure favourable penalty rate.
- Notification, full disclosure and payment must be made within strict time limits (see below).
- All undeclared UK tax liabilities for the last 20 years (whether connected to an offshore account or not) must be covered by the disclosure. Interest, plus a fixed penalty, is also payable.
- Penalties will be set at 10% (of the unpaid tax) for taxpayers with new disclosures where the tax due is more than £1,000.
- No penalty is due if the total unpaid liability is less than £1,000.
- A 20% penalty rate applies to those who, having previously been written to by HMRC under the ODF, did not make a disclosure at that time.
- HMRC will review all disclosures and, if satisfied that they are complete, confirm their acceptance.
- HMRC will reserve their right to prosecute in "serious cases".

Offshore means anywhere outside the UK and includes Channel Islands, Isle of Man and Republic of Ireland. Assets include any possession or property available to meet debts e.g. bonds and other financial products, land and property, trusts, business interests, yachts and vehicles.

The NDO can also be used where tax is underpaid as a result of an innocent error by a taxpayer. In such circumstances, taxpayers must provide evidence of the error to a local tax office and HMRC will consider whether or not penalties should be applied. However, it is vital to take advice before taking such action. HMRC has said that the normal penalty regime will apply to wholly domestic disclosures.

As part of its wider offshore campaign, HMRC has also signed a historic agreement with a known 'tax haven' Liechtenstein, to enable further information on individuals who hold accounts there to be exchanged with HMRC. A separate disclosure opportunity applies to Liechtenstein.

Key dates

In order to take advantage of the new disclosure opportunity, notification, full disclosure and payment must be made within strict time limits.

Firstly, a notification of intention to make a disclosure must be made from 1 September 2009 (for paper notifications) and from 1 October 2009 (for electronic notifications). For either method, the notification window closes on 30 November 2009. The notification of intention to disclose must include personal data; including, name, address and date of birth. Details of the tax owed do not need to be provided at this initial stage. HMRC will then issue a Disclosure Reference Number, which the taxpayer will need to use when making the full disclosure.

The second stage is the making of a full disclosure and full payment by 31 January 2010 (for paper disclosures) and by 12 March 2010 (for electronic disclosures). This will involve disclosing the income and gains that have not been previously declared on tax returns over the last 20 years, calculating the tax due and then calculating the amounts of tax, interest and penalties payable. It is important to note that a disclosure will not be complete (and therefore not accepted) until payment, including interest and penalties, has been made in full.

Once this disclosure window closes on 12 March 2010, those taxpayers who have not come forward and who are subsequently found to have undeclared tax liabilities are likely to face a penalty of up to



100% and, at least, 30% in addition to facing the possibility of criminal prosecution. HMRC has indicated that it will not offer these preferential terms to offshore account and asset holders again.

Conclusion

Taxpayers affected are strongly advised to take advantage of the beneficial terms currently being offered by HMRC. Caution must be exercised when making a disclosure however, as HMRC is not prepared to guarantee immunity from prosecution to anyone who uses the new disclosure opportunity. Those who have previously been under investigation by HMRC are particularly at risk. HMRC have also stated that those who submit a disclosure that is materially incorrect or incomplete face the risk of prosecution. Other options may be advisable for anyone with serious issues or for whom immunity from prosecution is essential. Given the complexities, anyone considering making a disclosure is strongly advised to seek specialist professional advice before approaching HMRC.

If you would like to know more about the new disclosure opportunity, make a disclosure or discuss any other tax issue please contact Michelle Sloane at The Khan Partnership on 020 7612 2530 for further advice.