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Clear skeletons out with care

Noshir J Avari advises caution over an offshore tax amnesty

Revenue & Customs has announced what many have described as a tax amnesty but which it calls "an opportunity for those with an offshore account and undisclosed tax liabilities to come forward now and settle their affairs with HMRC".

In reality, there is a wider significance that could affect many people who do not have offshore accounts. On the face of it, HMRC is offering to clear up all the tax consequences of operating such offshore accounts with a minimal cost in terms of penalties – as a general rule, 10pc of tax lost with no penalty on undisclosed amounts worth less than £2,500.

HMRC is providing online, telephone and postal options to help taxpayers with their disclosures.

Many of the cases coming to light will be insignificant, where foreign accounts exist that were simply created to acquire and maintain holiday properties. A large number probably will fall below the £2,500 income limit for penalties and the taxman will not be much interested.

In order to take advantage of the new facility, you must:

- by June 22 2007 notify HMRC of your intention to make a disclosure linked to an offshore account. HMRC will give you a disclosure reference number ("DRN") within three weeks and will send you a payslip and

envelope to use when you actually make the disclosure. ● by Nov 26 2007, calculate the tax liability, submit your disclosure and associated documents and pay the outstanding liability, including a penalty calculated at 10pc of the tax unpaid.

Sounds simple, doesn't it? If anything like the expected deluge of cases occurs, the amount of money pouring into the hands of Gordon Brown, or whoever holds the purse strings at the time, will be a huge Christmas bonus for the Government.

But let us look a little closer. Notifying an intention to disclose is easy. The difficult part is the next stage. You can make a disclosure as an individual, a director, partner, trustee, executor of an estate, charity or any combination. But each counts as a separate disclosure.

So, if you, your wife and deceased father were directors of a family business diverting profits to a Jersey account in your joint names as trustees of your children, there may be at least five disclosures to document. They may involve liabilities to income tax, capital gains tax, corporation tax, value added tax, National Insurance contributions and inheritance tax.

It is your responsibility to prepare the disclosure, calculate all the liabilities and pay the amount due, all within a maximum of six months, when in the past it was common for similar cases to be a year or more in settling.

You have to get the figures as near correct as possible. Mindful of the fact that banks and other bodies can take forever to provide information (even where there is not a huge demand for this from the taxpaying publi) HMRC



HMRC offers taxpayers with guilty secrets the chance to come out with their hands up

expects you to use "reasonable estimates" where there are gaps in information.

Note that the disclosure could theoretically cover all liabilities from all sources of income and gains for the past 20 years; these have to be expressed in sterling at the appropriate conversions. In practice, for the tax years 2000/01 and earlier, you need not provide information for years in which the unpaid tax and duties were "trivial".

At the point where you have made your disclosure and paid the money, the deal is not necessarily sealed. HMRC will accept most disclosures, especially the small ones, without much bother; but they "may need to contact you or your tax adviser, if you have one, to clarify any points" and "you may also be asked to provide appropriate evidence of your circumstances to satisfy us that your disclosure is complete".

They will confirm, they say, no later than April 30 2008, whether the disclosure has been accepted.

A warning note: despite the inducement of the 10pc

penalty, HMRC says it reserves the right to deal with appropriate cases by way of prosecution. In extremis, anything you put forward by way of a disclosure can be used as evidence in court.

The important message is not to think you can sweep large sins under the carpet by disclosing a fraction of the whole. If you are caught, the penalties will be much larger and may not be limited to financial ones.

HMRC has made it very clear that failure to take advantage of this present opportunity will receive no sympathy and miscreants discovered subsequently can be expected to pay heavily under the imminent changes in the penalties for tax offences. This really does therefore represent a good opportunity to put things straight with HMRC, but it has to be seen that this needs to be dealt with seriously, carefully and professionally.

In reality, a lot of the disclosure cases that HMRC are expecting will have an offshore account as only a small part of the picture. But

many inquiries linked to an offshore account (and the more interesting targets for HMRC) may be those where the offshore funds arise from understated business profits.

HMRC will necessarily accept that disclosures outside the guidelines are just as welcome and should be dealt with on similar lines, providing they are voluntarily made at the correct time. This represents an ideal, and possibly unique, occasion to make a disclosure that may have nothing to do with offshore accounts.

This latest move by HMRC is an excellent opportunity to clear out, relatively cheaply, some skeletons, and allay some fears, and full advantage should certainly be taken. But this has to be approached thoroughly and with the appropriate advice.

Noshir J Avari is principal of Avari and Associates, tax investigation consultants. He served the Inland Revenue for 20 years before setting up Avari and Associates.

For more information: www.avariandassociates.co.uk