

# If you have to account for offshore money, do it now...

UK tax authorities are to investigate 80,000 people who have offshore assets. **Noshir Avari** offers advice

**F**IRST things first: there is nothing illegal in a United Kingdom resident holding an offshore bank account.

But the trouble is that for many years, offshore bank accounts have been a favoured hiding place for taxpayers wishing to conceal funds from HM Revenue & Customs.

They may of course have had thoroughly innocent reasons. Even so, officers of HMRC and others of a cynical turn of mind have viewed the use of such accounts as offensive because, they believe, a substantial proportion have been used to shelter undisclosed profits from the authorities.

Until recently, the advantage lay with the taxpayer hiding behind the cloak of anonymity afforded by offshore institutions. There is no doubt that a great deal of money has flowed out of the UK, particularly after the end of exchange controls.

This position changed radically after The European Savings Directive provided for the exchange of information between EU member states from July 1, 2005, regarding interest on deposits where the depositor's place of residence was in another member state.

Very importantly, other jurisdictions, notably Jersey, Guernsey, the Isle of Man and even Switzerland, agreed to adopt the measures in the directive and to provide information to tax authorities. This opened a potential floodgate of information on funds stored abroad.

The flood recently promised to become a torrent, because of legal decisions won by HMRC which meant that information



There's gold in them there Alps: HMRC believes billions of pounds are owed in UK tax on assets held by Britons in countries such as Switzerland, and it is determined to chase individuals and get its hands on that money

held by British high street banks on tens of thousands of UK residents has been passed to the Revenue where bank accounts and/or debit and credit cards are known to be held offshore.

HMRC said research suggested some 400,000 UK residents hold a total of about £200bn in offshore accounts. In the case of just one financial institution, HMRC research showed there could well be more than 9,000 investigations, yielding an average of £170,000 per case. So the total tax take from clients of that one institution

could be as high as £1.5bn – plus interest and penalty charges.

This is serious business for HMRC and, of course, for a large numbers of vulnerable taxpayers. There are many who are trapped by arrangements previously made, unable to undo what has been done. They may have offshore companies, trusts and properties which they believed would be protected. The increase of money-laundering legislation has strengthened HMRC's hand with obligatory reporting of bank

transactions both within and outside the UK.

HMRC has indicated that it will investigate about 20pc of the 400,000 individuals with offshore assets during the next two years. In order to accomplish this, it has set up a sophisticated screening process and a new network of specialist offices.

This has been spearheaded by the Offshore Fraud Project Group, based in Bootle, Merseyside. In the past two years, it has collected millions of pounds from taxpayers with assets overseas. It has now been

augmented by the creation of Civil Investigation of Fraud ("CIF") teams based in 11 towns and cities including London, Bristol, Nottingham, Stockport, Leeds, Belfast, Cardiff and Edinburgh.

HMRC will be dividing investigations into expected yields so that anything between £50,000 and £500,000 is likely to be examined in one of these offices. The more serious cases, expected to be about 5pc of the total, will be handled by the existing eight Special Civil Investigation (SCI) offices, while the lower end of the spectrum will be dealt with in local tax offices.

HMRC is publicising these activities because it makes the tax collectors' job much easier if they meet with little or no resistance. It is also true to say that if someone knows that HMRC is likely to be after them (and there really is no hiding place, because closure of an account is likely to trigger an investigation) the best solution is to get in first by

making a voluntary disclosure, with proper skilful representation, and amass some "brownie points".

Investigations by CIF and SCI are conducted under what is called Code of Practice Nine, an announcement of which means that the case will be settled for money, with no criminal prosecution, providing a complete disclosure of irregularities is made. These proceedings usually commence with a reading of an extract from Hansard which records a Parliamentary answer to the effect that in cases of suspected serious fraud, there will be no prosecution if there is full disclosure.

The monetary settlement of these cases consists of three elements. First, there is the tax which would have been paid in the first place, if the tax returns had included the correct information.

Second, there is an interest charge, to recognise the taxpayer's use of HMRC's money during the period

after the tax should have been paid.

Third, there is the penalty, which the law sets at a maximum 100pc of the tax unpaid, but with a discount to recognise the extent and completeness of the disclosure, the amount of co-operation afforded by the taxpayer, and the seriousness of the case as a whole.

For example, with a typical tax loss of £200,000, correct handling of the case can save £50,000 in penalties. The importance of the negotiation process cannot be overemphasised, both in calculating the additional taxable income and in agreeing an appropriate penalty level.

The more difficult inquiries are often those involving business proprietors or directors, since the investigation will involve a detailed look at all aspects of the operation of the business and the finances of all the individuals and their families. Almost inevitably, there will be grey areas an investigator

will seek to exploit. HMRC will, of course, take the view that funds concealed from the tax authorities are not placed offshore to save tax on the interest arising, but come from fraudulent diversions of profit. Investigators are in the main experienced and highly trained. They expect to increase significantly the amount of any disclosure made, and attempting to pull the wool over their eyes is not recommended.

While an investigation is a serious matter, the approach being adopted by HMRC will ensure that for most individuals, their problem with offshore accounts can be resolved sensibly and confidentially, with a promise at the outset that no criminal prosecution will be undertaken – providing an accurate report is prepared and submitted on their behalf. HMRC aims to settle this sort of case within six months, but a professionally represented taxpayer is likely only to meet the investigator on one or two occasions, at the opening meeting and possibly at a final settlement meeting to sign after figures have been agreed.

Such an investigation can sometimes be a harrowing experience, especially if the case does drag on. A well-chosen, experienced adviser will be able to defuse any traumatic situations, as well as use his expertise to make use of any technical opportunities which might be afforded, for example by considerations of domicile.

It is also by no means unknown for taxpayers to have been suffering anxiety for many years in the knowledge that they have secreted money abroad but cannot afford to use it, for fear of discovery.

In these circumstances, it can actually come as something of a relief to unburden oneself, by disclosing the truth and wiping the slate clean.

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