

For those with undisclosed offshore assets, it's the last chance to confess, says Noshir Avari

Time and tide wait for no taxpayer

THE OFFSHORE Disclosure Facility was designed for people to reveal offshore and other tax irregularities to HMRC, and to make restitution of avoided tax, together with commercial interest and a penalty of 10 per cent of the tax unpaid.

To take advantage of this, taxpayers notified an "intention to disclose" by June 22, 2007, and must follow this by November 26, 2007 with a disclosure of, and payment of, all omitted liabilities. HMRC will examine disclosures and by April 30, 2008 either confirm that the disclosure is accepted, or raise any queries deemed necessary. Most disclosures will be accepted without query, and those taxpayers can then rest easy – assuming of course that they are not found to have been too economical with the truth!

All well and good, then, if an "intention to disclose" has been registered. But what about those unfortunates who missed their opportunity?

HMRC expected 100,000 disclosures from around 400,000 individuals identified with offshore accounts. The number of disclosures made is however lower, around 60,000, and there are several reasons for this.

- It is possible that despite their research, HMRC overstated its expectations of numbers who needed to disclose.

- For those who gamble, there is the

belief that one will not be identified, and will therefore avoid investigation. Perhaps an account was closed, or an investment was not with a targeted bank. But note that the banks have provided information covering several years; and other institutions will be targeted in due course.

- There are people who believe that despite having offshore income, they have no UK liabilities, due to their foreign origin; at its simplest, the fact of not being born here.

This brings in the question of domicile. There are many factors affecting domicile, but as a starting point, you inherit the domicile of your father and keep this unless you abandon it by truly adopting a different domicile. HMRC will look at UK residents with origins abroad, arguing that long-term residence here means adoption of the UK as a domicile of choice.

Note that non-UK domicile does not prevent UK tax liability, and if income arising abroad is remitted here, it is taxable. The major players in the domicile game are wealthy and can arrange to avoid any danger of offshore income reaching the UK, but most people do need their money available, and genuinely keeping it outside the UK may not be practical.

If someone with foreign origins has lived here for many years, expert assistance will be required in presenting a case for non-UK domicile.

- A final category is simple inertia, failure to act.

HMRC is identifying holders of off-



The Revenue is determined to uncover hidden offshore funds

shore funds, and it has been reported that 3,500 investigations are to be started each month into people who failed to declare themselves under the amnesty.

Such individuals should be concerned, because HMRC feels it has provided a well-publicised route to a low penalty as a reward for disclosure, and non-disclosure will therefore warrant higher penalties. It will "seek much higher than 10 per cent; in some cases 100 per cent will be demanded". In calculating penalties, HMRC will look

at the traditional features relating to mitigation. These are the size and gravity of the offence, the degree of cooperation and the quality and completeness of the disclosure.

Not disclosing irregularities until challenged and not cooperating with HMRC will increase the bill, with worse to follow in serious cases where HMRC will be looking for prosecution.

Then, the spectre of the Proceeds of Crime Act looms, and some taxpayers will see the difference between settling for £500/600,000 with HMRC on the basis of a disclosure of tax plus interest and penalties – say on undeclared income of £1 million over 10 years – and having the whole proceeds of £1 million confiscated in addition to a prison sentence.

I didn't register, but I wish I had – what should I do now?

The offshore disclosure régime applied to an "intention to disclose" registered by June 22, 2007. You can still make a disclosure; but to your normal

HMRC office. If a disclosure is made before November 26, 2007, before any approach by HMRC and if the liabilities are paid in the same way as with registered cases, a relatively low penalty may still be negotiable.

November is fast approaching, and it will be more difficult as time goes by

to carry out the investigative work necessary to produce proper disclosures. Time really is of the essence, and HMRC, having determined that this exercise will be very cost-effective, will not readily concede the advantage they have after the time limit expires. Then, taxpayers newly investigated can expect severe treatment. But for now, there is still an opportunity

to reach a reasonable settlement with HMRC. There are no promises, the whole exercise is a matter of negotiation, and expert professional assistance is vital.

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