

Let's get washed onshore, not up

key points

- The HM Revenue & Customs amnesty has been described as an opportunity for those with an offshore account and undisclosed tax liabilities to settle their affairs with HMRC on favourable terms
- Disclosure must be complete, or as substantially complete as you can reasonably manage, given the time constraints imposed by HMRC
- This move by HMRC offers an excellent opportunity to clear out, relatively cheaply, some skeletons and allay some fears

In all but the simplest of cases, the HMRC's new tax amnesty will prove far too complex for the uninitiated



Noshir Avari

In previous articles, I have drawn attention to the attack being mounted on holders of offshore bank accounts by HM Revenue & Customs, following its success in forcing UK clearing banks to provide details of such accounts maintained by customers. I pointed out that HMRC expected to recover vast amounts of tax, with accompanying interest and penalty charges, from taxpayers as a result of investigations into their tax affairs.

The HMRC's Offshore Disclosure Facility of 17 April is described on its website as: "An opportunity for those with an offshore account and undisclosed tax liabilities to come forward now and settle their affairs with HM Revenue & Customs."

In reality, as will be seen below, there is potentially a wider significance. 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 – generally 10 per cent of tax lost with no penalty on undisclosed amounts totalling less than £2500 – and it is providing online, telephone and postal options to help taxpayers with their disclosure.

Many of the cases coming to light will be insignificant, where foreign accounts exist which were simply created to acquire and maintain holiday properties. A large number will probably fall below the £2500 income limit for penalties, and HMRC will not be much interested in them.

If anything like the expected deluge of cases occurs, the amount of money pouring into the hands of Mr Brown, or whoever holds the purse strings at the time, will be a huge short-term Christmas bonus for the government.

Deadlines

The facility imposes two deadlines. You must notify HMRC of your intention to make a disclosure by 22 June and submit your disclosure and pay your liability, including a penalty of 10 per cent on the unpaid tax, by 26 November. A few points to note:

■ **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, etc, 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, VAT, national insurance contributions and inheritance tax.

■ **It is entirely 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 very common for similar cases to be a year or more in settling.**

■ **You have to get the figures as near correct as possible, but, mindful of the fact that banks and other bodies can take for ever to provide information.**

■ **HMRC offers no assistance in calculating figures. That is up to you, although "you may want to seek professional advice". Note that the disclosure could theoretically cover all liabilities from all sources of income and gains for the last 20 years; these have to be expressed in Sterling at the**

appropriate conversions. In practice, for the tax years 2000/2001 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. The Revenue will obviously accept most disclosures, at least the small ones, without much bother; but it "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 30 April next year whether or not the disclosure has been accepted.**

A warning note, however, despite the inducement of the 10 per cent penalty, HMRC says it reserves the right to deal with appropriate cases by way of prosecution, and of course anything you put forward by way of a disclosure can be used as evidence against you in court, since you will not have the protection of the old 'Hansard' approach.

■ **The message here is not to think you can automatically sweep large sins under the carpet by disclosing a fraction of the**

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No man is an island: the move by HMRC should allow for a good clear up, but advice from a qualified individual will be essential

whole – if you are caught, the penalties will be much larger and may not be limited to financial ones. Disclosure must be complete, or as substantially complete as you can reasonably manage given the time disclosure constraints imposed.

■ **At the same time, if, "exceptionally", you cannot afford the whole amount due, you will need to negotiate specialised instalment terms with HMRC – and note that you must do this before you submit the disclosure, which rather evades the point that until the disclosure is accepted and agreed you may not know whether you can afford the settlement.**

■ **The Revenue has made it very clear that failures to take advantage of this present opportunity will receive no sympathy whatever, and miscreants discovered subsequently can be expected to pay heavily, especially aided by the imminent changes in the structure of 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 the Revenue is expecting will only have an offshore account as a small part of the picture. But many enquiries linked to an offshore account – and the more interesting targets for HMRC – may be those where the offshore funds arise from understated business profits. The UK income, corporation and capital gains taxes arising in such cases will usually be substantially higher than the small amount of tax arising from the mere operation of an offshore bank account.**

Opportunity

This represents an ideal, and possibly unique occasion to make a disclosure which may have nothing whatever to do with offshore accounts.

This latest move by HMRC should be regarded as 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 sensibly and thoroughly, with the appropriate advice.

Although the HMRC website purports to provide the necessary guidance, in reality making a proper disclosure may well prove far too complex and time-consuming for uninitiated taxpayers in all but the simplest cases.

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