

## **Offshore Assets Investigated**

### **Following new plans by HM Revenue and Customs to target offshore assets, Noshir J Avari of Avari & Associates explains how the investigations will work.**

Investigations will be conducted under HMRC code of practice 9, which is good news because it means that the case will be settled for money, with no prosecution assuming a proper initial disclosure followed by the submission of a report commissioned and paid for by the taxpayer as representing his full disclosure. These reports can be expensive exercises, but if properly prepared and followed by skilful negotiation can recoup their cost in terms of the final resolution with HMRC.

Following the unification of the Revenue and Customs departments, these new style investigations also encompass any VAT liabilities, a welcome development avoiding the previous nightmare of a second investigation by one body in succession to the other.

Monetary settlement of these cases contains three elements. There is the tax which would have been paid in the first place if the tax returns and accounts had included the correct information. There is an interest charge, to recognise the taxpayer's use of HMRC's money, and there is the penalty, which the law sets at a maximum 100% of the tax unpaid, but discounted to recognise the extent and completeness of the disclosure, the amount of cooperation by the taxpayer and the overall seriousness of the case.

With a tax loss of say £200,000, correct handling of the case could save £50,000 in penalties compared with an ineffectual "head in the sand" approach. The importance of the negotiation process cannot be overemphasised, both in establishing the additional taxable income and in agreeing the appropriate penalty.

#### **Tax Issues**

The most difficult enquiries tend to involve business profits, since the investigation here will involve an exhaustive examination of the operation of the business, its accounts and the finances of the directors or owners and their families. Almost inevitably there will be grey areas which an investigator will seek to exploit, and there may be many alternative approaches to computing omitted profits.

HMRC will take the view that funds concealed from the tax authorities are not placed offshore merely to save tax on the interest arising, but represent fraudulent extractions of profit from the UK business. Investigators in the CIF offices are generally experienced and highly trained; they will expect to increase significantly the amount of many disclosures and trying to pulling the wool over their eyes can be very expensive, financially and worse, and is not therefore recommended.

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Whilst an HMRC investigation is a serious matter, the HMRC approach will ensure that for most individuals, their problem with offshore activities 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.

It is likely that an investigation will take some time to complete – HMRC aims to settle this sort of case within 6 months – but a professionally represented taxpayer is likely only to meet the investigator concerned at the opening meeting, and possibly at a final settlement meeting to sign an offer in settlement when figures have already been agreed.

Despite the fact that most CIF and SCI officers do their job courteously and efficiently, a long investigation can be harrowing, and a good advisor will be a counsellor, able to absorb and remove much of the pressure on his client, and well able to use his technical expertise to make use of opportunities to mitigate the overall financial damage.

It is not unusual for a taxpayer to have been suffering for years in the knowledge that he has secreted money abroad but he cannot afford to use it, or much of it at least, for fear of discovery. In these circumstances it can indeed be a relief to unburden himself and wipe the slate clean – at, unfortunately but inevitably, some cost!

**About the author:** Noshir J Avari, Principal of Avari & Associates Limited, served the Inland Revenue Department for 20 years prior to setting up Avari and Associates in July 1988.

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