

Noshir Avari on the wisdom of honesty

Offshore law



Don't coast along without declaring your assets

There is nothing illegal about a UK resident holding an offshore bank account. However, HMRC (HM Revenue & Customs) believes that a good proportion of these accounts have been used only to shelter undisclosed profits from the authorities. Until recently the advantage lay with the taxpayer hiding behind the cloak of anonymity afforded by welcoming offshore institutions, and there is no doubt that a great deal of money has flowed out of the UK.

This position changed radically when, on July 1 2005, the European Union Savings Directive provided for exchanges of information between EU member states regarding interest arising on a deposit account in one member state where the depositor's place of residence was in another member state.

Furthermore, in April 2006, a landmark court ruling forced Barclays to hand over details of thousands of its customers which HMRC estimates could yield millions of pounds of unpaid tax. More recently, HMRC won further successes against Lloyds TSB, Royal Bank of Scotland, HSBC and HBOS which owns the Halifax. Eventually, all banks with overseas branches will be caught in the net.

This is serious business for HMRC and of course for a large number of vulnerable taxpayers. HMRC reckons that it will be investigating 20 per cent of some 400,000 individuals holding such accounts in the next two years and has set up a sophisticated screening process via the creation of Civil Investigation of Fraud (CIF) teams. More serious cases, expected

to be five per cent of the total, will be handled by the existing eight Special Civil Investigation offices (SCI), and the lower end of the spectrum will be dealt with in existing local tax offices.

HMRC are widely publicising these activities, so they meet with little or no resistance, and prove to be straightforward. 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.

The monetary settlement of these cases consists of three elements. There is the tax which would have been paid in the first place if the tax returns 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 per cent of the tax unpaid, but with a discount to recognise the extent and completeness of the disclosure, the amount of cooperation afforded by the taxpayer, and the seriousness of the case as a whole. The importance of the negotiation process cannot be overemphasised here, both in the area of calculating the additional taxable income and in agreeing an appropriate penalty level.

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