

## Won't get fooled again?

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By Noshir Avari

HMRC's new scheme to encourage taxpayers to declare offshore income may sound very similar to the last one, but the risks are higher this time around and it is best to come forward now, says Noshir J Avari

HM Revenue & Customs has announced a new initiative to persuade taxpayers to come clean about offshore investments. HMRC's permanent secretary for tax, Dave Hartnett, says "this will be the last opportunity of its kind".

So, here we are again. If you have had income from abroad which has not been declared on tax returns here, this really is the last chance to come forward. No, honestly. They do really mean it. Taxpayers don't have an offshore disclosure facility (ODF), they now have a new disclosure opportunity (NDO).

The NDO carrot, such as it is, is a low penalty rate of ten per cent of the tax lost. That is, unless you registered your intention to disclose under the 2007 scheme and then overlooked the reminding letters sent to you by HMRC when the scheme closed. If you failed to make a disclosure then, the penalty this time will be 20 per cent of the tax. And they know where you live.

If you ignore Big Dave's carrot, his Big Stick will get you and any unpaid liabilities will attract penalties "of at least 30 per cent rising to 100 per cent of the tax evaded" and you run the risk of prosecution.

### How did this happen?

As if you didn't know from last time, HMRC is after undisclosed income abroad. Using groundbreaking legal proceedings, the department obtained details of interest arising offshore to UK account holders of five large banks, from Barclays to the other clearers. It set up the offshore disclosure facility, which ran until November 2007 and which raised about £450m from a total of 45,000 people – both figures far lower than HMRC hoped for on the basis of information held.

When the facility closed, HMRC made it clear that it was continuing the fight against funds held offshore and, since then, matters have moved on in some important ways.

Last year HMRC said a new campaign would be aimed at upwards of 300 banks and building societies with offshore operations, and it has been aided in this by the signing of agreements between the UK and other countries allowing exchanges of information. Significantly, these agreements include the popular tax havens such as Jersey, Guernsey and the British Virgin Islands. HMRC has not been slow to exploit the opportunities here, although it is clear that the wheels of cooperation grind slowly when it comes to countries less under UK influence.

Other weaknesses have appeared in what were previously thought to be untouchable areas of comfort for tax evaders; recently there was the controversial purchasing by HMRC of information on Liechtenstein accounts, which has resulted in major investigations into hundreds of UK taxpayers – which alone may yield as much as the first facility.

There were the well-publicised raids on several safety deposit facilities in London, which revealed an Aladdin's cave of wealth from a variety of illicit sources – not least from tax evasion.

## What are they really after?

For the last few years, tax has been deducted at source from interest arising on accounts in the EEC, where the account holder wishes to remain anonymous to his home territory. Hiding such interest from HMRC is therefore a fairly pointless exercise if tax on the interest is all that is at stake. HMRC is really interested in the source of the funds banked in the account.

If, for example, these are undeclared profits of a UK business, from property sales either here or abroad or income from trusts, the consequences can be serious if HMRC becomes aware of the facts where no disclosure has been made. It is these cases in particular where taxpayers need to take advantage of the NDO, because it represents a chance to wash away the sins of the past at relatively low financial cost and with almost no risk of criminal prosecution.

In the present climate it is increasingly likely that HMRC will discover the true position, and it is certain that in due course it will wish to make public examples of some individuals caught out after having spurned two opportunities to put things right.

## How will the NDO work?

There is a timetable – see below – for notifying HMRC of your intention to disclose, then for completing your disclosure and paying the amount due in settlement. Confusingly, there are different time limits for disclosure reports on paper and those submitted online, but online is preferable – it allows more time and certainty that the disclosure has been received.

- 1 September 2009 (paper) or 1 October 2009 (online) onwards – notify intention to disclose
- 30 November 2009 – closing date for notification
- 1 September 2009 to 31 January 2010 – disclosure (paper)
- 1 October 2009 – 12 March 2010 – disclosure (online)
- Submit all the relevant schedules and calculations by 31 January 2010 (paper disclosure) or 12 March 2010 (online disclosure)
- Pay the amount due by 31 January 2010 (paper disclosure) or 12 March 2010 (online disclosure)

HMRC is publishing guidance on the details it requires, but basically a disclosure will have to include a complete calculation of all the taxes, interest and penalties payable together with full details of all offshore bank accounts and all assets held offshore, both during the period of the disclosure and as at 5 April 2008. There will also be a declaration that the disclosure is correct and complete.

After the closing date, HMRC will check disclosures for completeness but in reality this is bound to be highly selective with most disclosures accepted.

## Some points to note

- There will be no penalty if the total tax due is below £1,000.
- The disclosure must include all taxable income and gains not previously disclosed. This means from all sources within and outside the UK. HMRC will be looking for cases where the nature and amount of the offshore income suggests that UK profits might have been missed, and these cases will produce some significant investigations. It will be important to pause for thought before signing the final disclosure certificate.
- HMRC says that no one who fully disclosed last time was prosecuted, but that is not new; such prosecutions would only arise if the tax evasion was connected with a serious crime outside taxation.
- HMRC acknowledges that it may be possible to negotiate special arrangements to extend the payment time providing such arrangements are agreed before the closing date. Further, however, in these credit crunch times, experience suggests that HMRC can be flexible in negotiations both in arriving at taxable income figures and in agreeing final settlement figures. Good representation will make the difference here.
- One aspect arising in the 2007 cases was the question of domicile, sometimes linked to residence or non-residence in the UK for tax purposes. These matters are the key to determining liability in individual, corporate and trust situations, and they are highly technical areas. Experienced professional representation is vital.
- HMRC suggests that an agent can deal with the whole process for you. In even a relatively small case, assembling and interpreting all the relevant material and calculating the liabilities can be difficult enough. But with many currencies to deal with, unfamiliar investment vehicles, double taxation issues

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and withholding tax to consider, taxpayers and inexperienced practitioners can easily be out of their depth and in these circumstances HMRC is quite correct in making the point about agents.

- Of course, that helps the department by saving time and money and should expedite the flow of funds. Experienced agents could well save their costs in negotiated settlements, and that is in addition to removing the stress inevitably caused to the subject of a tax investigation.

We have seen cases where taxpayers could not face the music the first time but have come forward since, and we have been able to negotiate ten per cent penalty settlements. Now, however, those who did not follow up a declared disclosure intention in 2007 will lose out with either a voluntary 20 per cent or an (at least) 30 per cent penalty imposed when HMRC catches up with them, one way or the other.

In summary, yes, it is the same again. But the possible level of exposure does make it more sensible now to come forward.

Postscript:

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