

The taxman cometh

Taxpayers with offshore investments can't afford to lie low for much longer, says **NOSHIR AVARI**



Hideaway: Fontvieille, in the principality of Monaco, which is often regarded as a tax haven

HM Revenue & Customs has announced a new initiative to persuade taxpayers to come clean about offshore investments. Dave Hartnett, HMRC's Permanent Secretary for Tax, says: "This will be the last opportunity of its kind." Did he add: "Watch my lips"? Surely not.

So here we are again. If you have had income from abroad that has not been declared on tax returns here, this is the last chance to come forward. Taxpayers don't have an Offshore Disclosure Facility (ODF), they now have a New Disclosure Opportunity (NDO).

The NDO carrot is a low penalty rate of 10pc of the tax lost. That is, unless you registered your intention to disclosure under the 2007 scheme and 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 20pc.

If you ignore the Revenue disclosure offer you will run the risk of prosecution and any unpaid liabilities will attract penalties "of at least 30pc rising to 100pc of the tax evaded".

HOW DID THIS HAPPEN?

HMRC is after undisclosed income abroad. Using groundbreaking legal proceedings, the department obtained details of interest arising offshore paid to British 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 45,000 people, both figures far lower than HMRC hoped for on the information held.

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

Last year, HMRC said a new campaign would be aimed at more than 300 banks and building societies with offshore operations, and it has been aided by the signing of agreements between Britain and other countries allowing exchanges of information. These agreements included popular tax havens such as Jersey, Guernsey and the British Virgin Islands.

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

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

WHAT ARE THEY REALLY AFTER?

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

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. There are different time limits for disclosure reports on paper and those submitted on line, but online is preferable – it allows more time and certainty that the disclosure has been received.

- September 1 2009 (paper) or October 1 2009 (online) onwards – notify intention to disclose.
- November 30 2009 – closing date for notification.
- September 1 2009 to January 31 2010 – disclosure (paper).
- October 1 2009 to March 12 2010 – disclosure (online).
- Submit all the relevant schedules and calculations by January 31 2010 (paper disclosure) or March 12 2010 (online disclosure).
- Pay the amount due by January 31 2010 (paper disclosure) or March 12 2010 (online disclosure). HMRC is publishing guidance on the details it requires, but basically a disclosure will have to include a calculation of all the taxes, interest and penalties payable, together with full details of all offshore bank accounts and assets held offshore, both during the period of the disclosure and as at April 5 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 less than £1,000. The disclosure must include all taxable income and gains not previously disclosed. This means from all sources within and outside Britain. HMRC will be looking for cases where the nature and amount of the offshore income suggests that British 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 it 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.

One aspect arising in the 2007 cases was the question of domicile, sometimes linked to residence or non-residence in Britain 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 an agent can deal with the process for you. 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 by 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 10pc penalty settlement. Now, however, those who did not follow up a declared disclosure intention in 2007 will lose out with either a voluntary 20pc or an (at least) 30pc penalty imposed when HMRC catches up with them.

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For more information: www.avariandassociates.co.uk