



## 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". Did he add "watch my lips"? Surely not.

So here we are again. If you have received income from abroad which has not been declared on tax returns in the UK, this really is the last chance to come forward. Honestly. They said so, so it must be true. 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 10 per cent of the tax lost. That is, unless you registered your intention to disclose 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 20 per cent of the tax. If you ignore this incentive, HMRC will get you with the stick. 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.

So how did this happen? HMRC is hunting for undisclosed income held offshore. Using ground-breaking 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 ODF, 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 it was continuing the fight against funds held offshore, and since then, matters have moved on in some important ways.

### New campaign

Last year, HMRC committed to a new campaign 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, and which alone may yield as much as the first facility.

There were also 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, among them tax evasion.

For the last few years, tax has been deducted at source from interest arising on accounts in the European Economic Community, 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 very serious indeed if HMRC becomes aware no disclosure has been made. It is these cases in particular where taxpayers need to take advantage of the NDO, because it does represent a chance to wash away the sins of the past at relatively low financial costs and with almost no risk of criminal prosecution. In the present climate, it is increasingly likely 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.

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 April 5 2008. There will also be a declaration that the disclosure is correct and complete.

## Disclosure timetable

This is the timetable for notifying HMRC of intention to disclose offshore taxable assets. Confusingly, there are different time limits for disclosure reports on paper and those submitted online, but online is preferable

- 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 32 2010 (paper): disclosure
- October 1 2009 – March 12 2010 (online): disclosure
- January 31 2010 (paper disclosure) or March 12 2010 (on line disclosure): deadline for submitting all the relevant schedules and calculations
- January 31 2010 (paper disclosure) or March 12 2010 (online disclosure): deadline for payment due

After the closing date, HMRC will check disclosures for completeness, but in reality this is bound to be highly selective with most disclosures accepted. It is noteworthy that if the total tax due is below £1,000, no penalty will apply.

The disclosure must include all taxable income and gains not previously disclosed. That 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 UK profits might have been missed, and these cases will produce significant investigation.

### Scope for flexibility

HMRC states that no one who fully disclosed last time was prosecuted, but that is nothing new; such prosecutions would only arise if the tax evasion was connected with a serious crime outside of taxation. It acknowledges it may be possible to negotiate special arrangements to extend the payment time providing such arrangements are agreed before the closing date. Further, in these recessionary times, experience suggests 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 the UK. These matters are key to determining liability in individual, corporate and trust situations, and are highly technical areas. Experienced professional representation is vital. HMRC suggests that an agent can deal with the 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 and withholding tax to consider, taxpayers and inexperienced practitioners can easily be out of their depth. 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. There have been cases of such agents negotiating 10 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 a minimum of 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 makes a stronger case for coming forward to declare offshore tax liabilities now.

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