HM Revenue & Customs Invites Those with Undeclared Offshore Tax Liabilities to Come Forward

The concept of a disclosure campaign is simple - encourage people with outstanding tax liabilities to own up and pay up.

Getting people to do this spontaneously benefits HMRC because they collect outstanding tax liabilities without needing to get into costly investigations. It benefits taxpayers because they get to clean up their tax affairs more cheaply than would otherwise be possible.

HMRC acknowledges that there are various reasons why the right amount of tax is not always paid when it should be and dishonesty does not account for them all. Furthermore, HMRC wants to help people to put things right whatever the reason.

Taxpayers that want to make disclosures about undeclared liabilities are always welcomed by HMRC and unprompted disclosures from those who want to co-operate are viewed more favourably than if HMRC have to come knocking. Disclosure campaigns take this one step further. They offer softer punishment for those that come forward and threaten harsher punishment for those that don't.

The first disclosure campaign, the Offshore Disclosure Facility ("ODF") came about in 2007 when HMRC was controversially granted the power to obtain information from UK banks with overseas branches, specifically details of foreign accounts held by UK residents.

With so much information and limited resources, taxpayers were incentivised to come forward, make a full disclosure and pay what they owed. A carrot was offered in the form of a reduced penalty but there was also a stick. Anyone who received HMRC's letter about the ODF only had limited time to make a disclosure before the opportunity was lost and more severe penalties would be applied.

The ODF was a partial success and, although the amount of tax collected was disappointing for the Treasury, the ODF became the template for further offshore disclosure campaigns. The New Disclosure Facility, Lichtenstein Disclosure Facility and Crown Dependencies Disclosure Facilities all followed over the course of subsequent years as new information became available to HMRC. Each new campaign offered a new opportunity to a new cohort but all were essentially open to anyone with unpaid tax relating to offshore activities or assets to take advantage of.

The disclosure facility model has also been adopted by HMRC in their onshore compliance programmes. After selecting an area of the economy with a high risk of undeclared income, HMRC focuses their resources on educating and improving compliance in that area.

The same principals apply, disclosure facilities and investigations working in parallel such that the increased threat of investigation acts as an incentive to use the disclosure facility.

The "Let Property" campaign, open to landlords of residential property, and the "Second Incomes" campaign, open to employees earning untaxed income in their spare time, are two such campaigns currently on offer. For more information about these campaigns please see my article "HM Revenue & Customs Invites Landlords & Employees with Second Incomes to Come Clean".

The last few years have seen dramatic and rapid changes to international tax co-operation. The EU Savings Tax Directive operated between 2005 and 2015 facilitating European cross border information exchange.

The USA took the concept further with their Foreign Account Tax Compliance Act ("FACTA") that imposed tax reporting obligations onto all foreign jurisdictions. FATCA's wide reach means that all banks, investment houses, trust companies and other institutions anywhere in the world with US savers or investors must report details of the accounts to the IRS.

The UK followed the USA's lead with what was colloquially known as "Son of FATCA". Other countries also quickly realised that their own tax authorities could benefit from something similar.

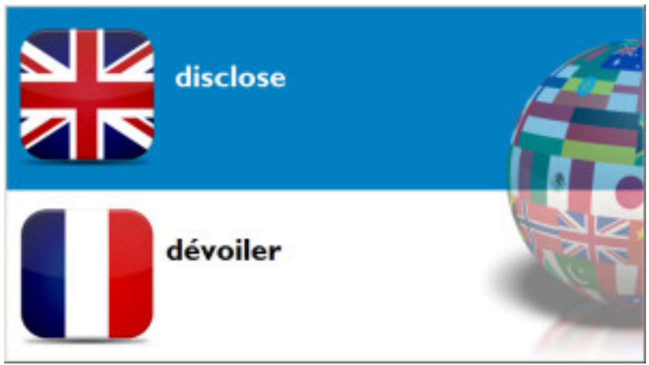
The Common Reporting Standard ("CRS") has consequently been devised to encapsulate in a single set of rules and procedures the requirements of all participating countries.

What this means for HMRC is that they will soon be receiving information from more than 100 countries about UK residents and their offshore accounts and investments. History shows that when HMRC gets hold of new information from overseas they announce a new disclosure facility. The closure of the last of the offshore disclosure facilities on 31 December 2015 marked the end of reduced penalties but not the end of offshore disclosure facilities completely.

The Worldwide Disclosure Facility ("WDF") was launched in September 2016 but this one is slightly different. In anticipation of receiving CRS information, HMRC enhanced their data analysis capabilities to be able to handle bulk data. They are now so confident in their data handling capabilities that they say they no longer need to offer reduced penalties as incentives.

The WDF does, however, does offer protection from, or at least, promises a reduced risk of exposure to, a whole raft of new, harsher punitive measures soon to be implemented. These punitive measures include higher penalties, naming and shaming and a greater chance of criminal proceedings. As such, the WDF is being made available as a last chance option to take advantage of the current penalty regime before it changes.

It is always a good idea to make a full disclosure to HMRC when it becomes clear that you have undeclared tax liabilities. The only incentive you need is that if you go to them before they come to you, you are putting yourself in a much better position. It will end up costing you a lot less money, time, aggravation and sleepless nights than if you ignore it and hope it goes away.



Anyone who thinks or knows they have an undeclared UK tax liability of any kind would be well advised to speak to a tax adviser to get a professional opinion and to act quickly because the chances of "getting away with it" only get smaller as time goes on.

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