



Taxation

Can you use the ‘new disclosure opportunity’ to save money?

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HMRC’s second initiative to encourage tax disclosures on offshore income is as generous as the original offshore disclosure facility but will be the last chance to bring your taxes up to date at a low cost.

What is this about?

HMRC knows that many taxpayers fail to include income and gains from their overseas assets on their UK tax returns and avoid paying UK tax on them. Naturally, it wants to stop this and the new disclosure opportunity is being offered as incentive to tax evaders to own up and pay their tax arrears at a relatively low cost. HMRC regards the discount on offer as a cost-efficient way to collect tax arrears when compared to the cost of carrying out thousands of individual tax investigations.

However, HMRC has recently won a series of cases against financial institutions and will soon obtain details of the offshore bank accounts of many thousands of UK based individuals. Armed with this information it could launch tax enquires and carry out other enforcement activities against individuals who do not cooperate. So this is a very simple carrot and stick approach by HMRC: it is offering a discount on penalties

for those who come clean but, in the background, there is the threat of a full tax investigation for those who do not.

Individuals, companies and trustees will be able to report previously undeclared offshore income and gains on a self-assessment basis. However, users must report undisclosed offshore income and gains that arose in any of the last 20 tax years. Any UK income or gains that were not previously reported must also be disclosed.

Unlike the previous offshore disclosure facility, this new disclosure opportunity does not cover tax irregularities with no overseas aspect. However, it is possible to voluntarily disclose any such matters to your local tax office. In most cases of voluntary disclosure, it is possible to secure low penalty rates but this cannot be guaranteed. If you wish to put right wholly UK tax irregularities please contact us to discuss your options and the likely overall cost.

Is this an ‘amnesty’?

The new disclosure opportunity is not really a tax amnesty, users will still need to pay the tax and interest charges for paying it late, but they will save on tax penalties.

Where income or gains that were wrongfully omitted from a tax return subsequently come to HMRC’s attention, it will usually seek to collect the outstanding tax along with interest (for late payment) and a penalty of up to 100% of the tax due, although, if the taxpayer cooperates, the penalty can be reduced. For taxpayers taking advantage of the new disclosure opportunity, HMRC will guarantee:

- a standard penalty of 20% of the tax due (if you received a letter from HMRC or your bank about the previous offshore disclosure facility)
- a standard penalty of 10% of the tax due if you did not receive such a letter

- no penalty where the outstanding tax is less than £1,000
- no penalty on pre-death liabilities of a deceased taxpayer.

It should be remembered that in cases where HMRC accepts that past tax irregularities arose as the result of an innocent error, tax penalties can be reduced to nil.

Are there any other advantages?

Bringing your tax affairs up to date now means that you will not have the worry and cost of a detailed tax investigation at some future date.

While HMRC is not prepared to guarantee immunity from prosecution to anyone who uses the new disclosure opportunity, you are far less likely to be prosecuted if you use it, rather than if you just wait for HMRC to catch up with you. Although some individuals making disclosures will be chosen for a more detailed investigation, if HMRC follows the pattern of the previous offshore disclosure facility, it is likely that most disclosures will be accepted and the matter regarded as closed.

Who can use it?

Any UK resident individuals, companies and trustees that have

failed to declare income and gains from overseas assets that are taxable in the UK. In addition, if you do not have an offshore bank account, you can use a similar facility to report UK income that has not previously been declared. Even if you declined the chance to use the previous offshore disclosure facility, you can still use the new disclosure opportunity – although the terms may not be as favourable for you and you should take advice on the best disclosure option available to you.

The practicalities

The new disclosure opportunity will be a three stage process like the previous offshore disclosure facility. Firstly you will have to apply for a registration number then HMRC will make a disclosure pack available to you.

The second stage is to complete and submit the disclosure pack to HMRC. This will involve disclosing the income and gains you have not previously declared on your tax returns over the last 20 years, calculating the tax due and then calculating the amounts of tax, interest and penalties payable. In most cases, you will be expected to send a cheque for the full amount due when the disclosure pack is submitted to HMRC.

The third stage involves HMRC reviewing your disclosure. If you are regarded as a low risk case and your calculations are considered correct and complete, HMRC will send an acceptance letter to you – this is expected to happen within four months of the relevant submission deadline.

The deadlines

The registration period runs from 1 September 2009 to 30 November 2009 or 1 October to 30 November 2009 if applying online. The completed disclosure pack must be submitted to HMRC by 31 January 2010 or 12 March 2010 if submitted online.

Your last chance?

HMRC has said that there will be no more offers on tax disclosures and that it expects to charge larger tax penalties in future under the recently imposed penalty regime.

The only sensible option for individuals, companies or trustees who have not fully declared their income in the past is to make a full voluntary disclosure to HMRC as soon as possible. But anyone contemplating this approach should seek expert advice on how to do it in a way that keeps penalties and risks to a minimum whilst reducing exposure to further investigation and potential prosecution.

For more information on the disclosure facility please get in touch with your local PKF tax investigation and dispute resolution expert at www.pkf.co.uk/invteam or email: taxinvestigations@uk.pkf.com or visit: www.pkf.co.uk/taxinvestigations

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