



PKF

Accountants &
business advisers

Taxation

Tax investigations watch

PKF's newsletter designed to help you keep track of developments in tax investigations.

December 2009

Disclose offshore accounts now to avoid 200% penalties

An announcement in the 2009 Pre-Budget Report highlights the fact that anyone with tax irregularities to declare on offshore bank accounts could be in for a shock if they do not own up very soon. The Government proposes to introduce tougher measures to punish those with undeclared offshore tax liabilities. It appears that the main reason for this change, as threatened by Treasury Minister Stephen Timms back in September, is to draw a line under the tax amnesties that have been offered in past years. The announcement has been followed up with a consultation document on tackling offshore tax evasion.

The changes

Currently, once any overdue tax has been identified by HMRC the penalty can in theory be up to 100% of the tax due. It is, however, rarely that high and in most cases is likely to be between 15% and 30%. These proposals would introduce far more punitive penalties for taxpayers with undeclared offshore tax liabilities: failure to declare such liabilities would attract the sort of penalty rates currently associated with tax fraud.

Although HMRC proposes that these new rules will take effect from April 2011 onwards, they have in effect been implemented already. That is because HMRC intends to use the FA 2007 penalty regime for deliberate non-compliance in the meantime, which will lead to a very similar result as under the proposed rules.

Coming clean at low cost

The extended registration deadline of 4 January 2010

for the new disclosure opportunity (NDO) means that individuals with unreported offshore income still have an opportunity to put tax irregularities right at a low cost. The big advantage of coming forward under this facility is the guarantee of penalties as low as 10%. Alongside the NDO is the Liechtenstein disclosure facility (LDF) which in many cases leads to an extremely beneficial outcome with only the last 10 years being considered (unlike 20 under the NDO) and various other favourable terms. There is no need to have a current presence in Liechtenstein as one can be acquired now if the relevant criteria are satisfied.

Despite recent uncertainties about future amnesties, it now seems clear that offshore account holders should use the NDO or LDF if at all possible – it will cost much more to put things right in future.

New offshore accounts

The Chancellor also announced a new requirement to notify HMRC when opening offshore bank accounts in certain jurisdictions, supported by an additional penalty regime of up to 100% of any lost tax. The details are not yet clear but we expect this to cover a wide variety of jurisdictions. The consultation document envisages that only accounts in those jurisdictions which automatically exchange information on such accounts with HMRC will be exempt. Therefore, in future, evading tax offshore could result in combined penalties of up to 200% - this might wipe out an individual's entire offshore funds and more on top!

This proposal seems to be the first step on the path used in the USA when filing future tax returns. Under the rules known as 'FBAR', US taxpayers have to declare details of all their offshore accounts otherwise

they face crippling penalties. If HMRC follows suit, its next move could be an announcement that all offshore accounts have to be listed each year, backed by swingeing penalties for those who don't report their accounts.

If your clients have something to declare, common sense dictates that this is done immediately under the NDO or LDF while it is still relatively cheap to do so.

Anyone who is put off by a 20-year period under the NDO should not discount the LDF, which is available in the right circumstances.

Clearly such clients will require very detailed advice and we would be happy to assist on a consultancy basis – for a confidential discussion of your clients' options please contact john.cassidy@UK.pkf.com .

In Practice

Doctors and consultants

Several reports suggest that HMRC is gearing up for a bulk exercise investigating the travel expenses of doctors and consultants across the UK. We understand that a number of HMRC's compliance officers in Edinburgh who formerly handled expat investigation work (now relocated to Manchester) will be working on the project. The project is also expected to focus on unreported consultancy fees from medical insurers after HMRC has issued notices to the insurers to obtain bulk data about the payments to consultants.

Penalty problems

It appears that HMRC's systems are not correctly calibrated when it comes to identify VAT penalties. We have come across instances of the HMRC issuing new penalty notices for VAT relating to tax

periods starting in 2007 when the new penalties should only be applied to tax periods starting on or after 1 April 2008 with a filing date on or after 1 April 2009. On challenge, HMRC apologised and admitted that "our system is incorrectly identifying cases like this as being liable to a potential penalty".

No job too small: in another case we have come across a new penalty for failure to take reasonable care of £12 on tax outstanding of £85. This was a penalty in the 30% to 15% range – reduced to 15% as the taxpayer got the maximum reduction for telling HMRC about it, helping HMRC understand it and giving access to records. As seems to be standard in these cases, HMRC suggested that the penalty could be suspended if the usual three conditions are complied with.

If you would like to discuss any of the matters raised in greater depth, please contact your local PKF tax investigations specialist or e-mail: taxinvestigations@uk.pkf.com

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