

HR & Tax Alert



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United Kingdom – Tax Authorities announce a Tax Amnesty for disclosure of offshore tax irregularities

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Executive summary

In a ground breaking move HM Revenue & Customs (HMRC) announced on the 17 April 2007 a Tax Amnesty aimed at taxpayers with offshore bank accounts containing undisclosed income taxable in the United Kingdom. The amnesty is to be effected through an “Offshore Disclosure Facility” for which registration must be made by 22 June 2007.

Irregularities disclosed under the facility will be subject to a maximum fixed penalty of 10% of the outstanding tax. Taxpayers with irregularities in their tax affairs unrelated to offshore income are also to be allowed to disclose these irregularities under the same terms.

Disclosure calculations should be submitted and the tax, interest and penalty should be paid by 26 November 2007.

Background

This move has come as a result of HMRC’s greater ability to obtain information regarding offshore bank accounts both through the European Savings Directive and following a Special Commissioner’s decision which gave HMRC the power to require UK banks to provide details of offshore accounts held by customers. According to press coverage various UK high street banks have already been requested to provide such details.

The amnesty is designed to allow people who hold either personal or company accounts offshore which contain undeclared income to come forward and disclose such amounts without HMRC being required to expend resources enquiring into each case separately.

Offshore accounts with no tax irregularities

As HMRC themselves acknowledge, holding an offshore account in itself is perfectly legitimate and there is no need to make any kind of disclosure where all tax due is paid. For example

- Individuals who are Resident but not domiciled in the UK

These individuals are only liable to UK tax on non UK investment income on the remittance basis. Therefore, investment income arising offshore and not remitted to the UK is not taxable in the UK and not reportable on UK tax returns.

- Non UK Resident individuals.

Only interest income arising in the United Kingdom is taxable in the United Kingdom therefore income arising on the offshore bank account in a non resident period will not be taxable in the UK even if remitted to the UK.

- Resident but not ordinarily resident individuals

Resident but not ordinarily resident individuals working in the UK are taxable on their earnings for UK duties. Their earnings for non UK duties are only taxable if remitted to the UK. Such individuals, therefore, have offshore accounts to receive at least part of their earnings to ensure it is not remitted to the UK.

Provided they have reported the correct amount of remittances on their tax returns no further disclosure is required.

Making a disclosure using the offshore Disclosure facility

Penalties

Taxpayers making disclosures under the facility will be charged a fixed penalty of 10% of taxes due on top of the tax itself and interest thereon. Where the income disclosed through the facility is less than £2,500 no penalty will be levied.

Tax years covered

Taxpayers will be expected to include undeclared income from the 1987/88 tax year onwards. For years prior to and including the 2000/01 tax year it will not be necessary to provide information for years where the unpaid tax was trivial.

Registration

Taxpayers intending to make a disclosure through the facility must notify HMRC by 22 June 2007. HMRC will not accept notifications after this date. Notifications can be made by telephone, online or by post.

Deadline for submitting the disclosure calculations

The disclosure including a calculation of taxes should be submitted and payment of taxes, interest and the 10% penalty made before 26 November 2007. HMRC will begin accepting the disclosure calculations on 28 June 2007.

Inadequate records

HMRC are aware that in cases where the disclosure stretched back for many years it may not be possible to obtain exact details. In such situations they have advised that a best estimate should be made of the undeclared income but individuals should be prepared to justify their estimations if requested by HMRC to do so.

Incorrect and Incomplete Disclosures

HMRC have advised that they will reject disclosures where they are found to be materially inaccurate or incomplete, are made by those already under investigation, or come from people suspected of serious organised crime where a criminal investigation would normally be pursued. In cases where a disclosure has been rejected HMRC will provide notification of this by 30 April 2008 at the latest.

It is unclear what the consequences will be for individuals whose disclosures are rejected and also what level of inaccuracy will be assessed as "material".

Consequences of not disclosing offshore irregularities

HMRC have announced their intention to target individuals with offshore bank accounts and undeclared liabilities following the end of the notification period. Where HMRC discover undisclosed liabilities individuals can expect penalties significantly higher than the 10% offered in the amnesty and no less than 30% of tax outstanding.

Disclosing irregularities not related to offshore issues

Though individuals with irregularities in their tax affairs that are not related to offshore bank accounts cannot use the facility as described above they are entitled to make disclosures of any irregularities under the same terms as those using the facility. These should be made to the individual's local tax office and are subject to the same time limits.

Making a voluntary disclosure outside the tax amnesty framework

Individuals should remain aware that the ability to make a voluntary disclosure of tax irregularities has always existed and indeed if an individual did make such a disclosure with no prompting from HMRC in almost all cases penalties would be mitigated well below the maximum 100% of tax due, and on some occasions reduced to nil. Therefore making a disclosure under the amnesty framework described above and paying a fixed penalty of 10% may not necessarily be to the individual's advantage. It remains to be seen however whether penalty levels on voluntary disclosures agreed with HMRC following the closure of the amnesty period will rise and individuals considering making a voluntary disclosure may prefer the certainty of the fixed 10% penalty.

Next steps

Individuals with tax irregularities should consider their options for disclosure carefully but quickly. The deadline for registration under the amnesty is just nine weeks away. Those considering making such a disclosure should contact their advisors as soon as possible to ensure preparation of the disclosure and payment of any tax due can be made before the deadline of 26 November 2007.

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