

The “New Disclosure Opportunity”

Anyone reading the personal financial press over the last year or two will be aware of the fact that HM Revenue & Customs (HMRC) have taken very strong action to obtain from banks details of customers holding funds with their offshore operations. As a result, HMRC have accumulated a lot of information about customers, and are offering a “last chance” for those who have not until now disclosed their foreign bank interest to come forward and pay the tax they owe, plus a penalty which will be capped at 10%, rather than the more typical 30-35% or the maximum 100%. Plus interest.

The new disclosure opportunity (NDO) actually goes further than that. It is open for anyone who has an offshore account or asset to come forward and make disclosure under the advantageous terms.

Is everyone with an offshore account liable for UK tax?

The answer is a yes and no. Yes, anyone resident and domiciled in the UK (and some non-doms) with an offshore account or asset is strictly liable for UK income tax on the income they get from it. But no, not everyone ends up paying UK tax. In many cases tax is deducted in the offshore jurisdiction and a credit for that foreign tax reduces the UK tax to zero. Or they have to file a tax return and pay taxes in the country where the income-producing asset is situated - so, again, there is a credit for the foreign tax

which may be offset against what would have been the UK liability. In some cases (non-doms claiming the remittance basis) tax will be due, but only if and when the income is brought to, or enjoyed, in the UK.

So, what is the NDO?

The Government are obviously keen that everyone liable to pay tax in the UK pays all the tax due. Understandably, they and HMRC are seeking ways to encourage everyone to pay voluntarily, before they begin to use their powers to investigate those known to have foreign income who still do not come forward. There has already been one disclosure opportunity, a couple of years ago. Some people known to have received interest from the offshore branches of the main high street banks were contacted by HMRC in the course of that opportunity but chose not to come forward - we will return to them later.

For now, against a trawl by HMRC of most UK banks, a great deal of information is now held by HMRC. The Government has decided to make available what they are calling the “last ever” chance for people to pay the tax and interest due, and offering encouragement in the form of a cap on the penalty which will be charged of 10% of the tax due. This compares with a typical rate of 30-35% and a maximum of 100%.

Income which can be disclosed within the NDO is any income connected with a

foreign source - so, for example, foreign bank interest, income from a foreign trust or rents from letting a holiday home outside the UK.

STEP ONE

You must notify HMRC of your intention to disclose, stating your name, your date of birth and a contact address. This notification must be given between 1 September 2009 and 30 November 2009 (if you notify on paper) or electronically between 1 October and 30 November 2009.

STEP TWO

You then need to put together your disclosure, ready to be made no later than 31 January 2010 (paper) or 12 March 2010 (electronic).

What goes into a disclosure?

First of all, you will need to make a list of everything you have omitted from your UK tax returns - not just foreign-sourced income.

Second, you must calculate the tax and/or duties you owe, plus the interest and penalties due. HMRC will issue guidance on the calculation of interest and penalties (note that penalties are capped ONLY as regards income linked to offshore accounts and assets).

Then you need to write your disclosure, which must contain:

- disclosure of at least one unpaid tax or duty (for example, Income Tax)
- a summary of all tax and/or duties, interest and penalties due
- details of offshore bank accounts relevant to the disclosure and/or open at 5 April 2008
- details of offshore assets held at 5 April 2008
- an offer to pay
- a declaration that the disclosure is correct and complete

Disclosure is not complete until you have paid the full amount due.

HMRC can and will check some of the items you disclose against information they hold. Subject to that, HMRC will consider the disclosure and, if they are content with it, they will issue an acceptance. Essentially, that will be the end of it.

You mentioned people approached by HMRC in the previous opportunity?

Anyone who received a letter in the course of the 2007 opportunity cannot take advantage of the 10% penalty cap. Instead, for those who were approached but did not come forward, the penalty for the tax on income connected with an offshore account or asset will be 20% of the tax.

And what if I have income or gains which I still choose not to declare?

Strictly, you have no choice. We cannot

recommend anything other than complete disclosure.

The UK government and governments outside the UK are determined to stamp down on tax evasion and in consequence are co-operating ever more closely to see that their tax "net" catches everyone it should. There is more and more exchange of information and former tax havens are being ever more open.

Anyone who does not take advantage of the NDO to disclose faces the possibility of penalties of 30-100% and criminal prosecution.

And if I have not disclosed UK income or gains?

Then you may be able to disclose under the NDO if you have also omitted foreign income or gains from your returns, but if you do not then you would have to go forward with a voluntary disclosure. In either case you are potentially liable for penalties of up to 100% of the tax, but in our experience HMRC will reduce the penalties substantially in the event of full and complete voluntary disclosure (so long as they do not know of, or suspect, any other omissions).

Is there a de minimis?

Yes. If the total amount of the unpaid liability being disclosed is less than £1,000, you need not pay a penalty.

How can Buzzacott help?

We can steer you through each stage of the new disclosure opportunity. We can help you to identify the undisclosed

income or gains, including helping with obtaining figures from overseas bank, trustees, agents and advisors. We can calculate the tax, interest and discuss with you the likely penalties. We can deal with the notification on your behalf, prepare the disclosure package and file it on your behalf, and we can deal with any and all resulting correspondence from HMRC.

Basically, the process will inevitably be unpleasant, but we will do all we can to make it as painless as possible.