

Offshore Disclosure Facility - a tax 'amnesty'?

April 2007

HM Revenue & Customs (HMRC) have recently announced a tax amnesty for undeclared offshore accounts. This follows recent victories in the courts which have led to HMRC obtaining detailed information about holders of such accounts from most of the major banks.

The amnesty enables taxpayers with undisclosed income or gains in relation to offshore accounts or assets, to make a full declaration with a guaranteed penalty of only 10%. In order to take advantage of this facility there is a set procedure and a tight timetable. There is also a similar, parallel, procedure for dealing with the reporting of previous under-declarations which do not have any offshore connections.

While the vast majority of our clients are unlikely to be affected, we are sending this briefing to publicise the amnesty to those who may inadvertently have failed to make full disclosure.

Offshore Disclosure Facility – key features

- The facility is open to those who hold or have held either directly or indirectly an offshore account that is in any way connected to a loss of UK tax and/or duties.
- For anyone with such an account, full disclosure of all undeclared tax liabilities can (and must) be made - not just those connected with the offshore account.
- HMRC are offering a fixed penalty of 10% (in addition to the tax and interest) on the unpaid taxes which is much lower than might otherwise be expected.
- The facility is being offered for a limited period – intention to disclose must be given to HMRC by **22 June 2007**, and disclosure and full payment of all taxes, duties, interest and penalties must be made by **26 November 2007**.

Why use the Offshore Disclosure Facility?

After 22 June 2007 when the notification period ends HMRC will target holders of offshore bank accounts who do not disclose. They will compare information in their possession with taxpayers' UK tax histories and make enquiries or investigations where there is a mismatch. Where additional tax is due they will seek higher penalties than the 10% available under the facility. These penalties could be up to 100% and are unlikely to be less than 30% of the tax due. In exceptional circumstances they may prosecute.

How do I know if I should make a disclosure?

In many cases a simple omission or misunderstanding may have led to the non-disclosure. If this is the case, it will generally be preferable to take advantage of the facility as, given the publicity it is receiving, it may be more difficult subsequently to argue that failure to disclose was not deliberate.

If you are UK resident but not domiciled here, you are only required to pay UK tax to the extent to which offshore income and gains are brought into the UK. This is known as the "remittance basis". However, since 2005/2006 a claim for the remittance basis has to be made annually. If this has not been done, it will usually be appropriate to amend your tax return (before 31 January 2008) rather than using the facility.

If an investigation or enquiry into your affairs has already begun then the facility is not the appropriate method for making disclosure. Alternative arrangements are available.

A tax amnesty?

While the fixed penalty of 10% makes the facility look attractive, HMRC are not offering immunity from prosecution. Although in the vast majority of cases HMRC will not prosecute, they will consider it in certain instances such as in cases involving wider criminality, or where there is deliberate concealment or deception.

How can Burges Salmon help?

Burges Salmon has wide experience in dealing with disclosures to HMRC, including cases where the matter could lead to criminal charges (we include amongst our tax lawyers a former police officer who is well-versed in assisting on HMRC investigations). We can also help you assess your

personal circumstances to decide how disclosure should be made and whether disclosure under the facility is appropriate. For further information on this or for tax advice generally, please contact us.



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