

By Chris White, Francis Carreras and Grahame Jackson

Introduction

In 2007, as a result of HMRC receiving information from five major UK banks with offshore subsidiaries, HMRC offered an Offshore Disclosure Facility (“ODF”) which was designed to allow those people holding offshore accounts to declare those accounts and put their tax affairs in order. However, due to lack of publicity only 45,000 of the estimated 55,000 people targeted by the ODF made a disclosure. This fact, coupled, with HMRC gathering information from another 117 banks around the world has led them to offer a New Disclosure Opportunity (“NDO”). HMRC has made clear in its literature that this is the last chance people with offshore accounts will have to make a disclosure.

During the ODF many people made a notification that they would give a full disclosure but never did, HMRC never followed up these people. This is not a situation we expect to continue and we do not expect that HMRC will be as lenient during the NDO.

What Are HMRC Offering?

The NDO is a scheme whereby anyone taking advantage of the opportunity it offers will see “certainty of treatment”. That is, HMRC have agreed that they will offer people limited penalties as a result of a disclosure. This is not a full amnesty, a disclosure will result in penalties but those penalties will be on favourable terms. They are:

- A fixed penalty of 10% of the taxes/duties underpaid
- No penalty if the underpaid tax is less than £1,000.

However, if HMRC wrote to you about the ODF in 2007 then you will be charged a fixed penalty of 20%. So if you knew about the ODF but did not make a disclosure you will be penalised.

If a customer of a bank HMRC have details of does not make a disclosure under the NDO then the taxpayer will be open to an investigation conducted by HMRC. They will compare their information with the taxpayer’s tax filings and any mismatch may lead to them contacting the taxpayer and undertaking compliance checks and enquiries. Any penalties imposed as a result of these investigations are likely to be between 30% and 100% of the unpaid liabilities. They will certainly be more than the 10% under the NDO.

How does it work?

If the taxpayer wishes to make a disclosure under the NDO then he must contact the HMRC disclosure line as soon as possible. The scheme works in three stages, Notification, Disclosure and Acceptance.

The taxpayer has until **30th November 2009** to notify the HMRC of their intention to make a disclosure. This is literally a question of contacting them by telephone, in writing

by email or online and declaring your intention to make a disclosure. Your tax advisor can do this on your behalf. HMRC will then contact you and forward relevant forms.

Once the taxpayer or his agent has notified HMRC then the taxpayer/agent should work out the liability they have. This can be filed by paper forms or online. If you wish to file by paper then it must be done by **31st January 2010**; online filings will be accepted until **12th March 2010** these should be made along with payment. HMRC will then accept or decline to accept the disclosure (they expect to accept the vast majority).

What the HMRC say they will not Accept.

HMRC have warned that they are unlikely to accept disclosures if:

- They are found to be materially incorrect
- They are disclosures for taxpayers already under investigation
- They believe that the amounts disclosed are proceeds of Serious Organised Crime (such as VAT fraud, or where there is an ongoing criminal investigation)

HMRC will consider all the disclosure after 12th March 2010 and accept or decline them. They expect to accept the vast majority of the disclosure made.

What Happens Next?

HMRC will continue to investigate offshore accounts, they will continue to acquire account information from more banks and they will expect the taxpayer to make full disclosure in the coming years. Failure to disclose will leave the taxpayer open to increased penalties if they come to HMRC's attention.

If you think that you are affected by the NDO then you may wish to contact professional advisors as matters of residence in the UK or your domicile status in relation to UK may have an effect.

Hassans tax team are in a position to assist you in this matter, contact, Chris White, Francis Carreras, or Grahame Jackson on 00350 20079000, or by email to chris.white@hassans.gi, francis.carreras@hassans.gi , or grahame.jackson@hassans.gi