

## **NEW DISCLOSURE OPPORTUNITY**

The deadline for notifying HMRC of an intention to disclose has been extended to 4th January 2010.

A new offshore disclosure opportunity was among a number of compliance measures announced in the 2009 budget designed to raise an additional £1 billion in tax revenues over the next two years.

The scheme, named by the government as the 'New Disclosure Opportunity' ("NDO") will give offshore account holders that are UK resident and have unpaid tax connected to an offshore bank account "one final opportunity" to disclose, and put their affairs in order. Paper filers will have from 1 September 2009 to 31 January 2010 to submit a claim for amnesty; electronic filers from 1 October 2009 to 12 March 2010.

Just as in any investigation into an undisclosed bank account HMRC will expect a disclosure of not only the interest earned but also the sources of capital that gave rise to that interest. HMRC believes that in many instances the sources of capital derive from untaxed income.

Those individuals choosing to participate in the scheme will be expected to settle the tax owed, interest thereon and a reduced penalty of 10% by 31 March 2010. This penalty of 10% is much lower than many had expected and is clearly at a level which HMRC expects will encourage taxpayers to come forward, indeed HMRC has said that the penalty will be higher if an individual chooses not to disclose and HMRC instigates its own investigation. HMRC has also stated that it could instigate criminal proceedings in the most serious cases that do not come forward under the NDO.

However the 10% penalty will not apply where HMRC believes the taxpayer could have come forward under the first Offshore Disclosure Facility which was held in 2007. This applies to taxpayers with accounts at the major high street banks (Lloyds TSB, HBOS, HSBC, Barclays and RBS) who were sent a letter by the bank or by HMRC explaining the 2007 Offshore Disclosure Opportunity – for these taxpayers the penalty will be 20%. The 2007 Offshore Disclosure Facility was regarded as a success for HMRC bringing in over £400 million at a cost of approximately £6 million.

The amnesty in 2007 was offered as a result of information HMRC obtained from the five high street banks named above. Since then HMRC have sought information from up to 300 financial institutions (other banks, building societies and brokers). A number of these institutions disputed the formal notices. However in May 2009 it was announced that their attempts to halt the process were unsuccessful. The Special Commissioner has dismissed all appeals and thus ensured that HMRC will be able to obtain details of the account holders within these institutions.

HMRC have also received information as a result of the European Union Savings Directive (EUSD) which required territories to automatically share bank account details with the tax authority of the country in which the account holder is resident although some are subject to transitional rules which defer the provision of information. Should HMRC discover the existence of an offshore account they can use the recently negotiated Tax Information Exchange Agreements with Bermuda, British Virgin Islands, Guernsey, Isle of Man and Jersey to obtain detailed information from the authorities in these territories. Liechtenstein has also agreed to share information.

If you would like to any more information or would like to discuss any of the issues raised, please contact:

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