HMRC INVESTIGATIONS AND DISCLOSURES: THE LEGACY OF JIMMY CARR

Over the past 2 years HMRC has invested close to £100 million on tackling tax avoidance and evasion. They are using various behind the scenes technology to track and analyse property purchases, tax returns, loans, bank accounts and employment data amongst other things to create a risk profile database which will highlight transactions and help them identify those (whether intentionally or negligently) who are concealing any income or wealth from HMRC. Various inter-government agreements with offshore territories mean that the scope of their search has a global reach.

Likely we have Jimmy Carr and Starbucks to thank for this increased vigilance as HMRC are keen to show the media that "steps are being taken." Whatever the origins, the upshot is better quality tax investigations and a significant deterrent for those who have not made full disclosures to HMRC.

HMRC's increasing knowledge, reach and powers of inspection will affect everyone and extends to all taxes. The key is to make sure that your tax affairs are up to date and squeaky clean and ensure you put right any indiscretions before HMRC pounce. Where regularisation is required, it is (reasonably!) straightforward and relatively painless (that is compared to the alternative!). Here are a few possible avenues:

Liechtenstein Disclosure Facility

The LDF represents a real tax "amnesty". It came into being in 2009 and will continue to provide an opportunity to disclose until 31 March 2016. Under the LDF the taxpayer will be subject to a 10% penalty on all income and gains with a Liechtenstein connection in the period from April 1999 to April 2009 and can opt for a composite rate of tax on any outstanding liabilities as well as being guaranteed that he will not be subject to criminal prosecution. The SPOC (single point of contact) LDF team at HMRC provide an extremely efficient service. Even where a defaulting taxpayer has no funds in Liechtenstein it is possible to transfer funds to the territory in order to make use of the favourable terms of the LDF. Since its inception the LDF has raised some £630 million for HMRC.

Swiss Agreement

The Swiss Agreement came into force on 1 January 2013 with the first batch of one off payments being made 31 May 2013 raising £342 million for HMRC. It applies to UK taxpayers with funds in Switzerland all of whom will have had communications from their bank and ought to be considering their past tax compliance record and deciding a way forward. The information sharing powers under the Swiss Agreement will mean that there is no possibility of concealing assets in Switzerland. Where disclosures need to be made it is sometimes more worthwhile to move funds to Liechtenstein to make use of the LDF.

Other Offshore Island Facilities

The Isle of Man, Jersey and Guernsey have all recently signed disclosure facilities similar to the LDF which provide lower penalty rates and a 1999 cut off although do not guarantee immunity from criminal prosecution.

Contractual Disclosure Facility

If, with all the information at their disposal, HMRC start a tax investigation before the client gets round to making a disclosure as above it is too late; these favourable facilities will no longer be available with the result that the interest and penalties on the tax due will be much higher. However all may not be lost, there is still opportunity to make a deal with HMRC if the matter is dealt with carefully.

The CDF was introduced in January 2012 although didn't really gather pace until the back end of last year. It is a simple procedure whereby HMRC contact the taxpayer stating that they suspect there is some serious tax fraud and offer the taxpayer 60 days to consider their situation and respond to HMRC stating whether they want to sign up and outlining brief details of their disclosure. Once both parties have agreed to cooperate the client's advisers will set out in more detail the oversight and a civil settlement will be reached with no criminal sanctions for the taxpayer. The CDF still needs a few refinements (namely HMRC ought to stop discouraging taxpayers from using it by calling said indiscretion a "serious fraud") but is generally working well. And for those who will not cooperate beware- there has been a large increase in criminal investigations and prosecutions over the last 12 months.

The Legacy

Where a taxpayer (either an individual or a corporate) is concerned there may be irregularities in their previous tax filing history the penalty regime for "unprompted" disclosure before HMRC discover the irregularity themselves is much more favourable. The voluntary disclosure will also bring the taxpayer outside of HMRC's Managing Serious Defaulters special investigations unit and their Naming and Shaming lists on the HMRC website.

In our experience the use of the disclosure facilities made available by HMRC are extremely well administered and if used properly should produce a palatable outcome for the taxpayer. So use the legacy of Jimmy Carr to bring about reduced penalties for indiscretions or oversights and obtain peace of mind that HMRC are not going to come knocking on your door.

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