

**Go directly to jail; do not pass 'go'; do not collect £200.  
Is HMRC's approach getting out of hand?**

HMRC is planning to get seriously heavy with anybody who does not declare their foreign income and capital gains. Its plans were floated in a press release in April which accompanied a guidance note entitled *No safe havens*. This note was an impressive summary of how HMRC obtain information, making it pretty clear that if you deliberately conceal money in an offshore account, they will find it – and when they do, there will be some serious penalties.

Quite right too. Of course there should be criminal penalties for people who evade taxes; that is a crime and should be appropriately punished. So what is the big deal?

The big deal is that HMRC proposes to introduce a new strict liability criminal offence of failing to declare an offshore account containing taxable income and gains. The details are set out in a consultation document published on 19 August, together with a second document extending the idea to inheritance tax. 'Strict liability' means that you are guilty of the offence even if there was no intention to commit a crime. Strict liability criminal offences for which you can be sent to jail are rare – and generally offensive to anybody with a pulse. You cannot be convicted of murder, arson, burglary or much else without the prosecution being able to prove your guilt – and to prove it beyond a reasonable doubt. However, strict liability means that you are guilty and can be fined or sent to prison, merely for having money in an overseas account and not telling HMRC. There is no defence and no excuse. Go directly to jail; do not pass 'go'; do not collect £200. Do we not feel that something is getting a bit out of hand here?

The underlying reasoning can be found from the introduction to the consultation document, where HMRC says it is right to re-examine whether it should be necessary for it to prove that a person has acted fraudulently in order for the court to convict them of fraud. I am not sure why it assumes that it is right for this idea to be 're-examined'. Actually, I am quite sure that it is not right. We have a rule of law which has been the envy of the world – along with the professionalism of our tax authorities. I would suggest that for HMRC to be given power to have people sent to prison for a crime, without having the tedious inconvenience of having to prove that a crime has been committed, is unlikely to be regarded as a step forward.

However, with a little linguistic ambiguity, HMRC suggests that there may be defences to this new offence: for example, if the offshore account did not contain anything taxable. The funds might have arisen during a period of non-residence or may have been a gift from a third party, or maybe the taxpayer is a non-dom and claiming the remittance basis. It is a funny sort of strict liability if there is a defence, but never mind. Unfortunately, a genuine error or innocent mistake (even one based on expert professional advice) – and specifically a complete absence of any dishonesty – will not help you at all. Clang.

It will be interesting to see what sort of responses HMRC receives. However, the consultation document indicates clearly that the decision to introduce this offence has already been made and it is merely how the offence will be constructed and used by HMRC which is up for discussion.

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