

STRATEGIC TAX PLANNING PARTNERSHIP

International & UK Tax Consultants

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THE TRUTH ABOUT THE NEW DISCLOSURE OPPORTUNITY

Introduction

Following on from a previous attempt by the UK's HMRC in 2007 to get tax evaders to reveal undisclosed Offshore assets and pay tax on them, the NDO ("New Disclosure Opportunity") was recently launched this summer and closes on 30th November 2009.

Many members of the public and professionals have been bombarded by leaflets, fancy e-mails, postcards, webcasts and many other elaborate marketing tools explaining why it is such a good idea to come forward and go into the new NDO not just by HMRC but by Accountants and Solicitors!

This Article questions that perceived wisdom and looks at the many practical reasons why this second NDO is unlikely to be a success.

The first question to be asked is why a second facility has been necessary. In the original facility 45,000 people came forward and paid outstanding tax liabilities and a fixed 10% penalty. That facility recovered approximately £400m in unpaid tax. Sadly, the economic environment that we live in today is far different from that in 2007 when the first facility was operated. In fact, it is exactly those economic conditions which have prompted HMRC to launch the new NDO. The threat of large penalties and possible criminal prosecution are being wielded as threats against those tax evaders who did not come forward in the first NDO. However, the first NDO has not produced a large number of criminal prosecutions (although it has certainly produced some) and the reality is that many tax evaders go around their normal lives unaffected by HMRC's threats.

As with anyone who has got away with something for a long time, when they do not feel it directly or hear of people getting caught, it gives them renewed confidence.

There are five key reasons why the NDO is not attractive to many tax evaders.

Reason 1

Many of the tax evaders in question no longer have the liquid resources to pay HMRC. Or if they do, they have no other capital assets because their businesses, property investments, shares are either not producing income, standing at a loss, or are unsalable. They cannot let go of their one remaining asset and security whatever the risks.

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Reason 2

Their Offshore bank deposit, property or investments are the proceeds of long-standing UK tax evasion and entering the NDO would not help as they are likely to be rejected and subject to a lengthy full scale tax Enquiry with large penalties and a tax bill dwarfing the NDO figure.

Reason 3

If the tax evasion has been going on for 20 years or more the HMRC offer of a reduced 10% (or 20% penalty rate) will be swamped by the interest bill, that will usually be around two and half times the tax owed and will make up the majority of any sum owed!

Reason 4

In August, the UK HMRC entered into a more favourable Disclosure facility for those with assets in Liechtenstein. This facility may be open to others by transferring assets into Liechtenstein and runs until March 2015. So the 30th November 2009 deadline is not relevant.

(There are also good legal grounds for arguing that under the Human Rights Act this preferential deal is discriminatory and all tax evaders should be offered the same terms as those with Liechtenstein assets!)

Reason 5

Most tax evaders have a firm belief that if they are caught they will simply leave the UK, even if that means abandoning their home! The favourite destination of choice, is Spain! (Many are devastated to learn that the EU MARD Treaty of 2002 and the OECD Mutual Administrative Assistance in Tax Matters Treaty 2008 means that in all EU Countries and some further 19 Countries local Tax Authorities can simply be asked by HMRC to collect the tax owed. So, they will have to run far further to more remote unknown and possibly unattractive destinations to achieve their solution).

Conclusion

The combined effect of all 5 reasons above is that in spite of heavy and elaborate marketing by HMRC and Accountants and Solicitors, the practical reality is that most NDO prospects will not be coming forward.

The Liechtenstein facility holds more hope for a solution, especially as its lengthy timescale offers a chance for tax evaders to be in a better financial position to pay up. However, to enter it, assets need transferring to Liechtenstein and that may not be so easy.

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Assuming the NDO is unattractive, the only real urgency for tax evaders and Accountants and Solicitors at this time is to obtain expert tax law advice, to enable them to decide which course of action to pursue, even if it is to do nothing!