BDO Stoy Hayward

BDO Stoy Hayward Northern Ireland
April 2007

Tax Newsletter

Tax 'Amnesty'

After much rumour and conjecture in the press, HM Revenue and Customs (HMRC) announced their 'Offshore Disclosure Facility' on 17 April 2007.

Some time ago the HMRC were given the power to obtain information on offshore account holders from a number of banks.

Offshore accounts pay interest gross, rather than with basic rate tax deducted at source as is the case with most UK bank accounts. This interest is not, however, tax-free and should be declared to HMRC. Any tax due on the interest is then paid through self assessment.

However, it is estimated that a significant proportion of offshore account holders do not declare the interest and have, as a result, underpaid tax. Some of these investors are deliberately avoiding their tax obligations while others are unaware that they should be declaring the interest to HMRC.

HMRC have introduced the Offshore Disclosure Facility for a limited period only to encourage those with offshore accounts to voluntarily disclose previously undeclared income from both overseas and UK sources and indeed any irregularities in their tax affairs. The incentive to make a voluntary disclosure under the terms of the facility is a fixed penalty of 10 per cent of the unpaid tax (normally penalties can be as high as 100 per cent of the unpaid tax), with no penalties being imposed where the undeclared income is less than £2,500.

The unpaid tax will, however, still be payable in full, along with interest on the unpaid amounts being due from the original due date for payment of the unpaid tax.

In tandem with this HMRC are also offering the opportunity for anyone with tax irregularities, whether offshore or in the UK, to approach their local tax office with a voluntary disclosure and receive the same treatment with regard to penalties.

To avail of the fixed penalty HMRC must be advised of the intention to make a disclosure by 22 June 2007.

The disclosure must then be made and all taxes, interest, duties and penalties paid by 26 November 2007.

If you hold an offshore account or have any other offshore sources of income or own capital assets overseas now is the time to ensure that these are being properly treated with regard to UK tax.

HMRC are likely to come down hard on anyone who does not take advantage of the facility to put his or her affairs in order, where it is necessary to do so. However, it is important that you receive professional advice and guidance if you wish to make a disclosure to ensure that you are aware of all the potential consequences.

Please contact us if you require any further information on the facility or wish to discuss making a voluntary disclosure in respect of any aspect of your tax affairs.

Commissioners case decision leads to uncertainty in inheritance tax planning

A recent case heard before the Special Commissioners [SpC 591 Phizackerley (Personal representative of Phizackerley, deceased) v Revenue and Customs Comrs] has led to uncertainty in the area of nil-rate band planning for inheritance tax.

The facts of the case were these:

- The deceased and his wife purchased house as joint tenants in 1992.
- The deceased provided all funds for the purchase of the house, as his wife did not work.
- In 1996 the deceased severed the joint tenancy so that they held the house as beneficial tenants in common in equal shares.
- Wife died in 2000 and left her half share in the house to a discretionary trust for her husband and children.
- Deceased purchased this half share from the trustees in return for an IOU of £150,000.
- On his death this debt was held not to reduce his taxable estate as it referred to property which originally derived from him.

It would appear that if Dr Phizackerley had died first the debt would not have been disallowed.

The effect of this decision may mean that where nil rate band planning is used in respect of a house which has been paid for out of funds provided by only one of the spouses/civil partners it may fail.

The specific circumstances of this case mean that its effects may not be so wide ranging as some commentators fear, for instance, the arrangement is unlikely to have been challenged were it not for the IOU.

However, it does illustrate how easy it is to fall foul of the ever-changing legislation in this area, especially in regard to planning involving the family home.

If you have an estate with a value in excess of £300,000 you should consider inheritance tax planning and ensure that any planning already in place is still fully effective.

Please do not hesitate to contact us with any queries.

Taxman to crack the whip

Legislation has been introduced by the Finance Bill 2007 to provide a single new penalty regime for incorrect returns for income tax, corporation tax, PAYE, NIC and VAT where the penalty will be determined by the amount of tax understated, the nature of the behaviour giving rise to the understatement and the extent of disclosure by the taxpayer. It has also introduced a new concept of suspended penalties.

The new regime is likely to come into effect in respect of return periods commencing after 31 March 2008 where the return is filed after 31 March 2009.

Penalties will be imposed as follows:

- 30 per cent of the potential lost revenue for careless action (failing to take reasonable care).
- 70 per cent of the potential lost revenue for deliberate but not concealed action.
- 100 per cent of the potential lost revenue for deliberate and concealed action.

Penalties will also be imposed where HM Revenue & Customs (HMRC) have made an error in an assessment and the taxpayer fails to take reasonable steps to report that error!

It will still be possible to mitigate penalties by making a disclosure of the inaccuracy to HMRC, although mitigation will be restricted according to the type of inaccuracy and the nature of the disclosure.

One effect of the new legislation is that your local Inspector will only very rarely be able use his or her discretion to determine the penalty due – there will be clear guidelines as to what amount of penalty will be due in each situation. This will undoubtedly lead to increased penalties being applied, especially in cases where the inaccuracy being penalised is deliberate.

Another perhaps more worrying feature of the new legislation is in the wording, 'A penalty is payable… where HMRC think that Conditions… are satisfied'. Just how justified they have to be in their 'thinking' before a penalty is imposed remains to be seen.

VAT registration

Many smaller businesses are well aware that they do not have to register for VAT until their turnover reaches £64,000 – as set out in the recent Budget.

However, businesses approaching the threshold should be aware that the threshold is calculated in a 'rolling' 12 month total – not their turnover in a calendar or accounts year.

Therefore businesses should monitor their monthly sales and take any advice is necessary.

In addition, businesses below the threshold should consider regulation if their customers are VAT registered. It can afford an opportunity to reclaim on purchases and relevant expenses and save you money!

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