
Second Chances - 'New Disclosure Opportunity'?

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During the 1970s and early 1980s many Asian families moved to the UK from India, Africa and other parts of the world often to escape political turmoil and to build a new life. Many such families arrived with very little having been forced to abandon their businesses and their homes. However, these modern day pioneers brought to the skill, talent and entrepreneurial spirit. Perhaps it was the injustice of their plight that drove many in the pursuit of further success and recognition. For others the motivational driver may have been aspirational, having never had wealth, status or position. Hard work, endeavour and business acumen will have contributed in no small measure to creating modern day 'Slumdog Millionaires'. There is no doubt that Indian and Asian businessmen have contributed beyond measure to the economic prosperity and the rich culture of this country.

Of course many businesses that rose during the 70s and 80s have now passed to second and, in some cases, third generation family members. During the course of time businesses sprung from humble beginnings consisting maybe of one shop, one restaurant or one hotel will have grown into larger enterprises driven by the youthful vigour and ambition of their owners. Businesses will have evolved into compliant and well run establishments using robust business systems for measuring income and expenditure. Poor recordkeeping, shortcuts in procedures and irregular practices as a result of lack of time or cash flow concerns in those early days will generally have been put right by the successor, if not the original generation.

Significantly from a tax perspective, the migration means that hundreds of thousands of individuals of Indian or Asian descent who are currently living in the UK may be regarded as tax resident but not tax domiciled. In brief, this applies where individuals ultimately retain an intention to return one day to their or their parents' country of origin. On account of their tax status, many individuals will have followed tax advice and opened offshore bank accounts to mitigate their UK tax liabilities by not remitting overseas income to the UK. More sophisticated (and often wealthier) tax individuals may also have created offshore tax structures, incorporating trusts or Liechtenstein Anstalts (a cross between a trust and a company). Again, over time these tax structures may have lost their tax effectiveness or been otherwise compromised. Offshore tax planning may have become redundant or even inappropriate. It is crucial therefore for UK resident non-domiciled individuals regularly to review their UK tax positions to ensure the robustness of previous tax advice.

Finally, voluntary and spontaneous disclosure to H M Revenue & Customs ('HMRC') remains the only advisable option for those individuals who have deliberately chosen to evade taxes by systematically diverting income (sometimes to an offshore bank account). With the help of a tax investigation specialist, immunity from criminal prosecution may be negotiated and the best possible financial outcome achieved.

Following the success of the first Offshore Disclosure Facility operated by HMRC in 2007 (which raised in excess of £400m), as a result of information obtained about offshore account holders from five major banks, a second (and final) chance ("the New Disclosure Opportunity") is being launched this autumn. This is as a direct result of HMRC taking action against a further 30 banks to obtain customer and offshore bank account information. The last amnesty was accompanied by a 'carrot' of a 10% fixed penalty of all unpaid taxes (the maximum statutory penalty is 100% of unpaid taxes). It is not yet known what the incentive in terms of a penalty loading in respect of unpaid taxes will amount to but this is likely to be more than the 10% offered for the original amnesty but almost certainly no more than 30%.

The New Disclosure Opportunity will be available until March 2010 although registration to be included in the scheme is likely to be much earlier (perhaps as early as 1 September 2009).

If there are individuals who have not paid the correct amount of taxes either due to tax inexperience or tax evasion motives, this is the perfect (and possibly final) opportunity to come forward and make a voluntary disclosure. The introduction of a new penalty regime by HMRC from 1 April 2009 means in future there will be significantly higher monetary penalties

linked directly to the behaviour of the proprietor, partner or company director which has led to the underpayment of tax.

Under the new penalty regime, where there has been a failure to take reasonable care in one's tax affairs, a voluntary disclosure will result in a penalty from 0% to 30% of the unpaid taxes, whereas a disclosure on challenge by an Inspector of Taxes will give rise to a penalty in the bracket 15% to 30%. Where there has been a deliberate understatement of tax, a voluntary disclosure of liabilities will yield a penalty in the range 20% to 70% of the unpaid taxes, where as a prompted disclosure will yield a penalty in the range 35% to 70%. Finally, an underpayment resulting from a deliberate understatement with concealment (which might include using an offshore bank account or offshore tax structure), the penalty for a voluntary disclosure will fall in the range 30% to 100% and a forced disclosure will fall in the brackets of 50% to 100%.

The prospect therefore of a civil monetary penalty in the range of 10% to 30% as suggested above for **any** offence is from a financial perspective extremely attractive. In fact, there will never be a better opportunity to put right previous misdemeanours or serious irregularities.

This second chance should therefore be seized with both hands!

For further information or to arrange a free initial consultation, please telephone **Sean Wakeman, Partner** (020 7842 7285) or **Anand Unalkat, Tax Investigations Consultant** (020 7842 7143) at Horwath Clark Whitehill LLP.

Sean Wakeman has in excess of 20 years experience on both sides of the fence having been an Inspector with the former Special Compliance Office, H M Revenue & Customs. He has now been advising clients and defending their affairs for 14 years.

For a free consultation regarding any tax issue you may have including making a disclosure under the [NDO](#), please complete our [enquiry form](#) and one of our experts will contact you or alternatively call our helpline on 020 7842 7200.
