

tax



# The final gong

HMRC has offered taxpayers one last chance to declare overseas assets – take advantage while you still can, say **Jonathan Silverman** and **Andrew Kidd**

**THE WORLD IS** becoming a smaller place and no more so than in the private client world. Swiss banks ‘voluntarily’ disclosing information; bank data ‘going missing’ – tax authorities whether in the UK or elsewhere are having a field day!

The group of 20 major nations seemed to have declared war on so-called tax havens, perhaps fuelled in part by the public having a newly acquired interest in scrutinising private capital. Clients must face up to dealing with undeclared assets overseas for peace of mind and ensure they don’t leave their heirs in a non-compliant tax situation with unresolved issues.

December 2009 saw the door close on the widely publicised voluntary disclosure amnesty made available by HM Revenue & Customs, but all is not lost and there are even opportunities to discuss cases anonymously

– and potentially deal with them on favourable terms – with HMRC.

While the days of keeping funds abroad out of the clutches of the UK taxman are long gone, not everyone has recognised that ‘the party is over’. It appears that a significant number of UK taxpayers did not take advantage of the HMRC amnesty and are now either too apprehensive to address the issue or simply believe they are minnows and will slip through the net – but this is not true. HMRC is currently analysing data of over 500,000 account holders provided by some 3,500 institutions from whom they demanded information last August.

However, there is still time for those who wish to become UK tax compliant and seek protection against future prosecution for them and their successors.

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### A unique avenue

The one unexpected – and perhaps unique – avenue that remains available for UK taxpayers to become tax compliant, and which potentially applies wherever the overseas assets are held, is to take advantage of a deal struck between the UK and the government of Liechtenstein.

Announced by the UK and Liechtenstein on 11 August 2009 and known as the 'Liechtenstein disclosure facility' (LDF) this unique bilateral agreement saw both governments enter into a tax information exchange agreement accompanied by a memorandum of understanding and a joint declaration regarding the arrangements between Liechtenstein and the UK (links to all the documentation can be found through the HMRC website). In essence, it is the introduction of a five-year 'taxpayer assistance and compliance program'.

Involved in the deal-making process were transnational groups, governments and lawyers – pushing Liechtenstein towards being a transparent rather than enigmatic financial centre.

This arrangement goes beyond benchmarks in transparency and information exchange, offering UK residents the opportunity to regularise their tax affairs on extremely beneficial terms. Disclosure via a Liechtenstein financial intermediary, if properly handled, will result in HMRC undertaking:

- to limit any penalty to ten per cent of the unpaid tax (otherwise penalties can be as much as 200 per cent of the tax due);
- to commence the period of enquiry from 1 April 1999 (the 'ten-year' look back as opposed to the general 20-year power and unlimited power in relation to inheritance tax);
- not to apply a penalty in the case of 'innocent error';
- to offer a 40 per cent 'composite' rate or to allow the calculation and payment of the tax due which can result in a significantly streamlined tax calculation and consequent liability;
- to give immunity against prosecution for tax-related misdemeanors;
- not to 'name and shame' and no criminal prosecution; and
- to have a 'no names' informal discussion.

The LDF is available to virtually all UK residents with offshore sited assets – not just those with an existing account in Liechtenstein – though it may be necessary to quite properly open an account in Liechtenstein – and some of the benefits only apply to liabilities arising before 6 April 2009.



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For example, a person holding a Swiss bank account sheltering an undisclosed UK tax liability will qualify for the LDF if part of the funds are transferred to Liechtenstein and the Swiss account was not opened via a UK branch or agency.

While transferring assets or opening an account in Liechtenstein to take advantage of the LDF does of course carry a cost consequence, this should be minimal. A comprehensive examination of the client's circumstances must be made.

While the LDF does not expire until 31 March 2015, clients should register for it as soon as possible as the terms of the facility will not be available to those clients against whom HMRC commences an investigation before they have registered. Also, the longer it is left

the more expensive disclosure becomes – so anyone with undisclosed overseas assets should act now. We suspect this deal has only been agreed to by HMRC because it recognises that it will lead to a significant tax take: crucial at a time when HMRC is under pressure to increase the chancellor's coffers.

As part of the program, Liechtenstein financial intermediaries will be under a duty to identify clients who may have a liability to UK tax and, if that client cannot provide evidence of compliance, the intermediary will have to cease acting for the client.

While it has been observed that the LDF has resulted in an upsurge in business being transacted in Liechtenstein, it remains to be seen whether any other jurisdictions will follow suit. What is clear is that time has been called on undeclared funds wherever they are sited in the world, and clients need to be carefully advised so they may navigate their way around the traps and utilise the opportunities as they arise.

### Complete disclosure

Of course, disclosure has to be handled properly and must be complete and full. HMRC has indicated that this really is the last chance to disclose voluntarily so it is important that clients get the right professional advice as soon as possible and an introduction made, where appropriate, to one of the recognised Liechtenstein financial intermediaries.

Clients cannot cherry pick which assets in which jurisdictions are disclosed – in line with the spirit of the agreement, full and complete disclosure is required.

Some clients may not qualify – most obviously those subject to a current HMRC investigation. The definition of someone being subject to a current investigation is: they are suspected of serious tax fraud and have been formally notified by HMRC that an investigation has commenced, or they have been arrested for a tax-related criminal offence. Of course, this is in the extreme minority of cases.

For those who do qualify, the fees involved are not significant but the savings in potential penalties are considerable. Moreover, there is no need to repatriate funds which can be used freely in the UK by current and successive generations subject to present tax obligations.

Clients can also legitimately use the opportunity to take advantage of overseas trust structures to protect the funds in the future.

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