

Offshore Corporates owning UK property (Lecture P1350 – 9.43 minutes)

This session will consider the HMRC campaign targeting offshore corporates owning UK property. The campaign is due to start in November 2022. This session will consider how advisers should respond if HMRC approach one of their clients under this campaign.

Background

HMRC are starting another campaign in November 2022. This campaign is focussed on tackling non-compliance linked to non-resident corporates that own UK property. HMRC have identified potential offenders following a review of various data, including from the Land Registry. The review identified offshore corporate owners that may not have met particular UK tax obligations. The targets of the campaign will be the latest in a long line of recipients of HMRC nudge letters, which are issued outside, and without the protection of, the normal enquiry process.

Overview

Under the Campaign, HMRC may issue one of two “nudge” letters, depending on the circumstances. Advisers should note that HMRC may not necessarily restrict themselves to the issue of one of the letters where they suspect non-compliance, and may take a different approach to that outlined in this session.

When one of the letters, considered further, below, is issued, they will be sent to the corporates, and will be accompanied by a Certificate of Tax Position and a Notice of Intention to Disclose. The companies will be expected to complete the relevant document, and make the appropriate disclosure to HMRC, where one is necessary. There will be follow-up action by HMRC if a response isn't sent to the letter.

The HMRC letters

The letters will, as noted above, be sent to the corporates. However, HMRC recommend that the companies should ask connected UK-resident individuals to ensure their personal affairs are up to date in respect of their tax position, including in relation to the relevant anti-avoidance provisions.

The recipient is given 40 days (from the date of the letter) to respond, otherwise HMRC state that they make an assessment of what they believe the company owes, and may open an investigation and consider charging additional penalties. In addition to the documents noted above, the letters will also be accompanied by various HMRC factsheets, including those relating to the Human Rights Act and penalties.

The first letter will be issued by HMRC to non-resident companies that own UK property and may need to disclose income received as a non-resident corporate landlord. The letter may also be issued where such companies may have a liability to the Annual Tax on Enveloped Dwellings (ATED).

The company is asked to contact any UK-resident individuals who have any interest in the income or capital of the company, whether directly or indirectly, to ensure that their tax affairs are up to date with the Transfer of Assets Abroad regime.

The second letter will be issued to non-resident companies that appear to have made a disposal of UK residential property between 6 April 2015 and 5 April 2019 without filing the relevant, Non-Resident Capital Gains Tax (NRCGT), return.

Additionally, the corporate is asked to consider whether they have any other UK tax liabilities, including on rental profits, income tax under the transactions in land rules and/or ATED.

HMRC state that they will need to consider whether, for properties purchased by the company before April 2015, any part of the gain may relate to UK-resident participators. The company is asked to ensure that any such participators make sure that their tax affairs are “updated” if the relevant legislation (Section 13, TCGA 1992, now relocated to Section 3, TCGA 1992) could apply.

How to respond to a letter

The key message when a client has received one of the nudge letters under this campaign is to ensure it is not ignored. HMRC will not go away, and follow-up action will be taken, although perhaps not immediately. Advisers need to proceed with caution, as the safeguards associated with a formal enquiry do not apply when replying to a nudge letter.

Although the nudge letter will be issued in response to information received by HMRC, it may be that basic checks have not been undertaken before the letter is sent to the taxpayer. Advisers should establish the position with the client, and, if a disclosure is needed, determine the appropriate response.

When there is a disclosure involving a significant liability, or there are aggravating factors, as per HMRC’s criminal investigation policy, consideration should be given to use of the Contractual Disclosure Facility. Where this is being contemplated, you should consider seeking expert advice from a specialist adviser in this area before approaching HMRC. Whatever the outcome of the discussion with the client, they should not be allowed to sign the forms sent by HMRC with the nudge letters.

Contributed by Phil Berwick, Director at Berwick Tax