

Making a voluntary disclosure to HMRC

(Lecture P1235 – 14.59 minutes)

What is a voluntary disclosure?

The term “voluntary disclosure” is not defined in the legislation. Most people will recognise that “voluntary” means doing something because you choose to do it. The position, when considering a disclosure to HMRC (where a person is reporting an underpayment of tax arising from a mistake or error, etc), is that you also need to consider whether it is “unprompted” or “prompted”, which are both referred to in the legislation. FA 2007, Sch 24, Para 9(2) (a) states that a disclosure is “unprompted” if “made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the inaccuracy, the supply of false information or withholding of information, or the under assessment”. Para 9 (2) (b) states that a disclosure not falling within Para (2) (a) is “prompted”.

You will need to establish the facts to determine whether your client’s disclosure can be regarded as “unprompted”.

Why should clients make a voluntary disclosure?

HMRC have access to a substantial volume of information but have limited resources. Consequently, HMRC welcome voluntary disclosures.

HMRC carried out research into the motivators and incentives for voluntary disclosure, and the report can be found at the link, below:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457629/Understanding_the_motivators_and_incentives_for_voluntary_disclosure.pdf

There are numerous reasons why clients will want to make a voluntary disclosure to HMRC, and each will have their own. There are numerous benefits to clients, including the potential for a lower penalty than would otherwise be the case, and better management of the resulting enquiry.

How to make the disclosure to HMRC

Historically, there have been various HMRC disclosure campaigns, including the generous Liechtenstein Disclosure Facility. Currently, there is only one such campaign – the Let Property Campaign, which has been running for several years. The process is only open to individuals with a disclosure relating to income arising from residential property.

HMRC direct other potential disclosures to the Digital Disclosure Service, and, for reporting a UK tax liability that relates wholly or in part to an offshore issue, the Worldwide Disclosure Facility. These facilities are not mandatory, and disclosures can be sent to HMRC by outside of those processes.

Advisers need to check what facilities or campaigns are available at the time the client wishes to make the disclosure, and to check their terms and conditions, including eligibility criteria. The adviser then needs to determine the most suitable option for the client.

The disclosure process

There are various stages to the disclosure process. The circumstances of each case will determine the timing and, potentially, order of the stages (for example, in many cases investigation work will be undertaken before the notification is made to HMRC). The following is intended as a guide, which will cover the majority of voluntary disclosure cases (but see below regarding the Contractual Disclosure Facility):

- Notification to HMRC;
- Investigation by adviser;
- Quantification of disclosure;
- Submission to HMRC;
- HMRC review;
- Settlement.

When making a voluntary disclosure, the onus is on the adviser to form a view of the client's behaviour, so that they can determine the relevant period to be covered, and also the level of penalty. Advisers should consider seeking specialist input, to ensure that all relevant disclosure options have been considered, and that an accurate assessment has been made regarding the period to be covered. I have seen numerous examples where the adviser has not been able to take an objective view of the client's position, particularly where there has been a long-standing relationship.

Other considerations

Advisers need to recognise the limitations of HMRC's disclosure facilities, whether it is considerations regarding the period to be disclosed, or the time provided to submit the disclosure, when determining the best option for their client.

Another key consideration for advisers is establishing the client's behaviour. If HMRC consider that there has been deliberate behaviour, the level of potential penalty increases significantly, as does the disclosure period, and there is the risk of criminal investigation. HMRC's criminal investigation policy does not have a materiality limit, and advisers need to assess the position.

Advisers will need to consider whether the client should seek inclusion in the Contractual Disclosure Facility, and this is an area where specialist advice should be sought, unless the adviser has significant experience of this process. A key advantage of the Contractual Disclosure Facility is that the client has the benefit of immunity from criminal investigation, providing they make a full disclosure, and meet their obligations under the process. The Contractual Disclosure Facility will be covered in a future session.

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