

The Let Property Campaign (Lecture P1325 – 14.00 minutes)

The Let Property Campaign is a disclosure facility to allow residential property landlords to bring their tax affairs up to date. The process was introduced by HMRC in 2013 and was intended to last for a finite period. However, the Let Property Campaign is still here, and that is likely to be the case for the foreseeable future.

HMRC is in receipt of a significant amount of data on landlords, and they will contact those individuals who they think have not declared their income, usually inviting them to use the Let Property Campaign to do so. Advisers should note that also use other methods to follow-up on what they believe to be errant landlords.

The Let Property Campaign is only open to landlords with undeclared rental income relating to UK or overseas residential property. The process can be used by various landlords, including the following:

1. Those with one or more residential properties;
2. Landlords renting rooms in their main home using the Rent-a-Room scheme;
3. Landlord who specialise in property lets for students;
4. Landlords with holiday lettings.

The Let Property Campaign is not open to landlords letting out commercial properties unless they also have unreported income from residential property. The process cannot be used to disclose income on behalf of a company or a trust.

HMRC have produced guidance on the Let Property Campaign, and the guidance is updated from time to time. The disclosure process is now online.

Advisers should note that the Let Property Campaign does not provide preferential terms, and the normal penalty rules apply. In particular, the process does not provide immunity from prosecution.

How does the Let Property Campaign work?

HMRC may invite the taxpayer to participate in the process, typically following the issue of a nudge letter to the individual. Alternatively, a taxpayer can request inclusion in the Let Property Campaign, which an adviser can do on their behalf.

Notification is made to HMRC for the individual (where a relevant property is in joint ownership, separate disclosures will be needed), although details of the disclosure are not provided at this stage. HMRC will, if the person is permitted to use the process, issue a Disclosure Reference Number. HMRC allows 90 days from receipt of the reference number to submit the disclosure, make a formal offer to HMRC (to cover the tax, interest and penalties that have been calculated), and to pay the amount due. Where payment cannot be made within this timescale, a request for time-to-pay must be made before the expiry of the 90-day period.

HMRC will, following receipt of the disclosure, issue an acknowledgement, usually within two weeks. They will conduct further checks, including comparing the submitted disclosure with information already held. HMRC will then either accept the disclosure, as submitted, or raise any queries.

Taxpayers are expected to provide assistance to HMRC if more information is needed to enable consideration of the disclosure.

The disclosure

The adviser must determine the number of years to be included in the disclosure, and this is often an area that causes significant practical difficulties. That will depend on the relevant behaviour. The standard position is that the last four years need to be considered. Where there has been careless behaviour, the last six years must be considered, and where there has been deliberate behaviour, the adviser needs to consider the position for the previous 20 years. Where there has been a failure to notify the income, the default position is that the last 20 years need to be considered (unless there is a reasonable excuse for the failure, in accordance with the normal rules).

When the number of years to be included has been determined, the adviser must work out the rental income and allowable expenses for each year (to the extent not previously disclosed). Submitting a disclosure may mean that losses that would otherwise be lost can now be used.

Where there are incomplete records you should seek to obtain the missing information, otherwise estimates will need to be used. The estimates, and the basis on which they have been calculated, should be disclosed. As with other aspects of the disclosure, any such estimates can be challenged by HMRC.

The disclosure must include any other undisclosed income or capital gains, including income from non-residential property. Certain types of liability must be indicated in the disclosure but will be dealt with separately (including VAT/Employer Tax and IHT liabilities).

Practical considerations

Advisers should be aware of HMRC's extensive use of nudge letters. This subject was covered in another session, but it is important to note that such correspondence should not be ignored.

A key issue is determining the number of years to be included in the disclosure, and I have encountered many agents who have accepted that they are not detached enough to form an objective view of the client's behaviour. There is limited HMRC guidance on this aspect, and the onus is firmly with the adviser, and their client, in this regard. It is important to establish the facts, and, if necessary, obtain a second opinion on the view that HMRC are likely to take.

The limited time period to submit the disclosure, etc., can cause practical problems, although an extension can be requested. There is a limit as to what can be included with the online process, and advisers need to ensure that sufficient disclosure is being made.

The Let Property Campaign is not the only option for disclosing, and advisers should consider the options available. The options may include the Contractual Disclosure Facility, which can provide immunity from prosecution in cases involving deliberate behaviour.

As noted above, advisers should consider obtaining specialist advice (ideally before submitting the disclosure) where they have any concerns or want a second opinion on their client's position.

Contributed by Phil Berwick, Director at Berwick Tax