

## **Case study: Worldwide Disclosure Facility (Lecture P1405 – 11.56 minutes)**

This article considers a case study involving a submission under the Worldwide Disclosure Facility and highlights some of the pitfalls that await advisers submitting disclosures to HMRC.

### *Background*

The taxpayer, an individual, Mr X, was sent a “nudge letter” by HMRC. The letter referred to overseas income and gains that had not been declared to HMRC. The taxpayer had submitted tax returns to HMRC, but had not disclosed any overseas income or gains.

Mr X’s accountant spoke to the client about the letter, and enquired whether there were any sources of overseas income or gains which had not previously been disclosed to the accountant.

After several discussions and exchanges with the client, it was established that there was an offshore source of income that had not been disclosed. The accountant determined that there were amounts which could be offset against the income. The accountant considered that the client had taken reasonable care, such that there was only a liability for four years, and a penalty was not due. The accountant calculated the tax, and interest, that was due, and recommended that the client pay approximately £15,000 to HMRC to cover the liability. The disclosure was submitted to HMRC under the Worldwide Disclosure Facility.

The disclosure was subsequently reviewed by HMRC, who requested various information and supporting documents. The investigating officer subsequently met with the taxpayer, without the accountant present, and raised further queries. After a period of time, the officer concluded his review of the information provided, and sent his own calculations to the accountant.

The HMRC officer determined that Mr X had not taken reasonable care, and sought liabilities going back 20 years, on account of the taxpayer’s deliberate behaviour. In addition, the officer considered that the amounts offset by the accountant against the income were not allowable. The amount sought by the officer was, approximately, £400,000, which included a significant penalty (150%) under the Requirement to Correct regime. It was at this point that I was asked to get involved.

### *Case review*

It was important to establish the facts with the client, and to identify all relevant information and factors, including any not previously uncovered by the accountant, including relating to the client’s health. It was also necessary to consider the technical position in relation to the amounts claimed by the accountant, and which had been offset against the overseas income.

I requested all the correspondence with HMRC, together with the officer’s computations, and the HMRC notes of the meeting with the client, so that I could conduct a comprehensive review of the position. I concluded that the liabilities sought by HMRC were, broadly, correct.

However, there were various representations which could be made in relation to HMRC’s ability to recover certain liabilities. In addition, my review of the meeting notes indicated that the officer had not followed the correct procedures during the meeting with the client. A comprehensive submission was sent to HMRC, including comment on the procedural issues arising from the meeting with the client.

### *Outcome*

After discussion with HMRC, the representations made were accepted, including that a penalty was not due under the Requirement to Correct provisions, and the client's liability was significantly reduced from that sought by the investigating officer.

The settlement figure was considerably higher than that calculated by the accountant, but reflected the reality of the circumstances and what had transpired.

Ultimately, the client was happy with the outcome, as was the accountant.

### *Practical points arising*

The case highlights the pitfalls and traps that await accountants submitting disclosures to HMRC, including the following:

- Failing to take specialist advice soon enough (or at all) (earlier input from me in this case could have helped to establish the position without the intrusive enquiries from HMRC);
- Not taking into account, or establishing, all relevant factors in a case;
- Not establishing the correct technical position;
- Not being able to take an objective view of the client's circumstances (when, for example, considering the client's behaviour to determine the appropriate assessing period);
- Not managing requests for meetings with HMRC (there isn't a legal obligation on the client to attend a meeting with HMRC in the circumstances noted above), or pre-empting the possibility with the client;
- Being aware of the potential for the case to be investigated under Code of Practice 9 (the Contractual Disclosure Facility), where HMRC suspect fraud, or, potentially, using HMRC's criminal powers.

*Contributed by Phil Berwick, Director at Berwick Tax*