HMRC letters and ‘certificates of tax position’ to individuals with offshore income, gains and assets – an update for CIOT members

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The CIOT has recently published an update for members which provides information about HMRC’s letters and some guidance to help members decide the most appropriate way to respond if a client receives one of the letters.

The full update and an example of a recent letter and certificate of tax position are provided on our website. Before publishing the update, we shared it with HMRC to check that it accurately reflects HMRC’s position.

Background

Over the past couple of years, HMRC have been sending out letters to UK individuals who they have identified as having received income, gains or assets from overseas accounts or investments. These have been prompted by information HMRC have been receiving in the last few years from overseas tax authorities under Automatic Exchange of Information (AEOI) agreements about UK residents with financial accounts and investments overseas. HMRC also undertake some additional risk assessment before sending the letters.

The most recent letters sent this year have come from HMRC’s ‘Risk and Intelligence Service, Offshore’ and are based on information from tax information exchange agreements with other countries, including as a result of the Common Reporting Standard.

What's in the letters?

HMRC's letters use standard wording and start by informing the individual that HMRC have information showing that they may have received overseas income or gains which is taxable in the UK.

The letters tell the individual that it is their responsibility to tell HMRC about their UK tax liabilities from offshore income and gains anywhere in the world, and that it is important they check that they have declared all their UK tax liabilities. The letters suggest seeking professional advice if the person is not sure whether they have declared all their overseas income or gains. The letters are being copied to the individual's tax agent if they have one.

HMRC generally give 30 days to respond and all of the letters include a 'Certificate of tax position' form, which HMRC ask the individual to complete and return whether they have additional tax liabilities to disclose or not. HMRC use the 'Certificate of tax position' because it helps them minimise the number of 'no response' cases they would otherwise need to follow up. We discuss the details of the wording in the certificates in more detail in the full update on our website and also at (3) below.

What you should do if a client receives one of these letters from HMRC

1.Check the position.

HMRC is saying in the letter that they are aware the person has overseas income, not that their tax return is necessarily wrong. However, HMRC do carry out some risk assessment before sending a letter, so it will be essential to check whether the individual's tax affairs are correct and complete to the best of their knowledge and belief before responding to the letter.

2. Respond to HMRC's letter, whether or not there is anything to disclose.

- If a disclosure is required, the letter advises that this must be made via the Worldwide Disclosure Facility (WDF). However, HMRC cannot compel a taxpayer to use any specific method for their disclosure and using the WDF may not necessarily be the most appropriate method. Depending on the individual circumstances of the taxpayer, other approaches may be better: for example, Code of Practice 9 (COP9) (Contractual Disclosure Facility). Agents should

therefore consider their client's specific circumstances and advise on the most appropriate method for a disclosure.
A CIOT member must comply with the fundamental principle of professional competence and due care as set out in Professional Conduct in Relation to Taxation (PCRT). This means that they should not undertake professional work which they are not competent to perform unless they obtain appropriate assistance from a suitably qualified specialist. Advice from another adviser specialising in tax disputes may therefore be needed if the agent does not have the necessary expertise to handle a disclosure themselves. There is no de minimis level below which mistakes do not need to be disclosed.

- If no disclosure is needed, the person should consider sending HMRC an explanation by letter. Where no response is received, HMRC will follow up so not responding at all will attract more attention from HMRC. Responding to the initial letter will therefore mitigate the risks of further action being taken by HMRC.

If possible, try to respond within the 30 days provided by HMRC. However, if it is not possible or practical to respond fully to the letter within this timescale, consider contacting HMRC either by telephone or letter to agree a more realistic timescale with them.

3. Consider very carefully whether to sign and return the 'Certificate of tax position'.

Although the declarations in the 'Certificate of tax position' are similar, if not completely identical, to those on the self-assessment tax return, there are two important differences. Unlike the tax return:

- there is no legal obligation on the individual to complete the 'Certificate of tax position' and return it to HMRC; and
- the period covered by the 'Certificate of tax position' – and therefore the declarations – is not restricted to a particular tax year. It applies to all years.

Also, the certificate does not have a *de minimis* level.

In discussions between the CIOT and HMRC, HMRC have told us that they will accept a response by letter should an individual choose not to complete the declaration.

In view of the serious consequences of making a false declaration, it may be preferable to respond by letter to HMRC, particularly if, after reviewing their tax affairs, the individual believes that their affairs are correct and up to date and they do not need to make a disclosure. Responding by letter enables an explanation to be included, which could pre-empt further queries by HMRC. If the individual needs to make a disclosure but chooses not to complete the ‘Certificate of tax position’, it would be good practice to respond to HMRC’s letter in writing and advise HMRC that a disclosure via the WDF (or other method) is being made.

With data from overseas now being constantly received under AEOI agreements, HMRC are adopting an approach of sending out batches of letters at regular intervals. Members should be aware that this approach will continue for the foreseeable future.