TAXAdviser

Flexing muscles

1 July 2019

Dawn Register and *Matthew Watkins* look at how HMRC is strengthening its offshore strategy with the introduction of the new No Safe Havens strategy

What is the issue?

Along with this year's Spring Statement HMRC took the opportunity to publish its refreshed strategy on tackling all forms of offshore tax non-compliance, known as 'No Safe Havens 2019'.

What does it mean to me?

The new approach targets offshore avoidance as well as offshore evasion and covers a range of taxpayer behaviours. This more comprehensive response to the challenges faced by offshore tax non-compliance perhaps reflects HMRC's much better understanding of the complexities around offshore tax risks.

What can I take away?

The 2019 strategy is both positive and modern in its ideas and approach. However, its true effectiveness will depend on the implementation and results achieved by HMRC in the next five years.

Along with this year's Spring Statement HMRC took the opportunity to publish its refreshed strategy on tackling all forms of offshore tax non-compliance, known as 'No Safe Havens 2019'. The document brings together in one place HMRC's approach towards offshore tax compliance.

The previous strategy, 'No safe havens 2014', focussed only on offshore evasion whereas the 2019 version has a far greater reach. The new approach targets offshore avoidance as well as offshore evasion and covers a range of taxpayer behaviours. This more comprehensive response to the challenges faced by offshore tax non-compliance perhaps reflects HMRC's much better understanding of the complexities around offshore tax risks.

Looking ahead the three core strategic areas which HMRC will focus on are:

1. Leading internationally
2. Assisting compliance
3. Responding appropriately

We look at each of these in turn here.

Leading internationally

HMRC are keen to be seen as championing international tax transparency by improving international collaboration between global tax authorities. The main objective here is to ensure the correct UK tax is paid. That is a simple objective but many advisers will have practical experience of HMRC obtaining data from other jurisdictions which is either wrong or misleading. It is important that 'quantity' isn't substituted for 'quality' in this drive towards international tax transparency and the relentless flow of data.

As advisers we have heard HMRC tell us many times that the 'net is closing in' on those who seek to not pay their fair share (or in some cases, any!) UK tax. It is hard to disagree with that statement. The figures included within the No Safe Havens 2019 document certainly look impressive and would suggest HMRC action and resources in this area continues to be justified. For example, HMRC has 'raised over £2.9 billion in its offshore non-compliance crackdown since 2010' and 'Automatic Exchange Information agreements now cover 90% of global GDP'.

The introduction of the Common Reporting Standard (CRS) has resulted in more than 100 jurisdictions exchanging financial information automatically about accounts held in their jurisdictions. Information on more than three million UK taxpayers was received by HMRC in 2018 and is being used to detect possible offshore tax non-compliance. Now taxpayers are within the 'Failure To Correct' penalty regime it is less attractive than ever to risk being caught evading taxes offshore. (This follows closure of the Requirement To Correct period as set out in Schedule 18 F(No2)A 2017.)

There is a real sense that HMRC are investing heavily in technology and more sophisticated strategies to identify offshore tax non-compliance. Together with other members of the J5 Alliance (the other countries being Canada, the Netherlands, the United States and Australia), there is now a cross-sharing of the latest technology and analytical tools to tackle those who enable international tax crime, cyber criminals and money launderers.

What is clear from No Safe Havens 2019 is that one of the new challenges faced by HMRC is being able to obtain information from online platforms, where data is often held outside the UK. The offshore landscape is changing and HMRC give the impression they are changing with it. Beyond online platforms new 'solutions' are also being developed and other sectors and industries are expected to come within HMRC's focus in the near future. This extends to one of HMRC's greatest challenges in 2019, which is emerging technologies, now becoming increasingly accessible to those seeking to avoid or evade their UK tax obligations. Could we see even more extensions to HMRC's powers in the next Finance Bill?

Assisting compliance

Sometimes prevention is better than cure. As such, a major part of the new strategy focuses on providing further assistance to taxpayers in respect of offshore tax matters. This includes increasing awareness and understanding of their responsibilities. Better guidance and new education materials are always welcome. This also includes using new data and insights to help meet the needs of an increasingly complex area and an internationally mobile group of taxpayers, especially in the 'Wealthy' category.

Practical interventions are welcomed such as HMRC advising that they will begin to pilot the use of prompts in the foreign pages of the online self-assessment return. These will remind taxpayers that HMRC receives data on offshore investments and so additional care is needed. This approach is welcomed as it is arguably one of the areas where taxpayers frequently make mistakes and need professional tax advice. This new approach dovetails well with HMRC's £1.3 billion investment in its Making Tax Digital programme which, despite some legitimate and well-articulated criticisms, HMRC believes it will become the most digitally advanced tax authority in the world.

Other proactive steps include HMRC, for example, aiming to engage with taxpayers when certain life events are detected, such as retirement, which could change an individual's tax position. Such interactions are intended to prevent mistakes before they happen.

To take the 'assisting compliance' message beyond the UK it is interesting HMRC are looking to explore further opportunities to work with other countries to promote comparable standards for UK tax advice in those jurisdictions. The aim here is to prevent non-UK agents providing advice resulting in less UK tax being paid than is due.

However, in amongst all of the positive commentary in the 2019 strategy document it is important to flag one particular matter that should not be overlooked. The document states that it is the intention of HMRC to report to professional bodies including the ICAEW and CIOT what is (in *HMRC's* view) 'poor work' by an agent. We suggest that this measure must be carefully considered before implementation; clear examples and definitions are needed to meet this objective. We also hope this will be subject to scrutiny and testing before becoming business as usual. Although no details are given, the severity of any potential disciplinary action on the agent cannot be underestimated, and appropriate safeguards including appeal processes need to be incorporated here.

Responding appropriately

A common concern amongst agents is HMRC's approach to tax risk and taxpayer behaviour. There is a fine balance between HMRC assisting those who make honest mistakes, and introducing sufficient deterrents to those who deliberately seek to avoid or evade tax. There have been a raft of new measures in recent years aiming to penalise those who take steps to deliberately evade tax, including the strict liability offence and the extension of 'naming and shaming' provisions. Therefore any redressing of the balance to assist those at the 'innocent' end of the scale is a positive step.

Another change in HMRC's approach in recent years which is echoed in the No Safe Havens 2019 document, is the switching of focus onto those who enable tax avoidance and criminality, including tax evasion. HMRC has developed a new system that collates data on non-compliant enablers across sectors that allows a holistic view across the government. This is said to complement HMRC's existing tools to identify and assess risk and respond accordingly. We have recently seen the 5 April 2019 'loan charge' coming into force and many individuals caught by this charge are understandably questioning what steps HMRC are taking to tackle the original promoters. Many of the arrangements now caught by the loan charge were linked to an offshore entity in the first place. HMRC are keen to show that their approach is not one-dimensional.

What do taxpayers need to be aware of?

One of the most striking statistics in the document is that the CRS data revealed to HMRC that one in 10 UK taxpayers have an offshore financial interest. This is an unprecedented finding, as previously HMRC admittedly had no idea of the extent of overseas assets.

Of course many commentators are keen to highlight that this is no indication whatsoever of UK tax non-compliance. Indeed, there is nothing wrong with having an overseas bank account nor holding assets offshore.

However it is clear from this document that this information is attracting the attention of HMRC and will continue to inform their strategy for enquiries and investigations in the future.

It is likely that common areas of mistakes will continue to be the subject of HMRC enquiries. In practice we see this including foreign pensions, life insurance products, gains on foreign property and investments held through overseas platforms. It can be the case that the situs of assets is unclear for UK tax purposes. Taxpayers should be aware of this and seek expert tax advice proactively wherever necessary, particularly those who are categorised as wealthy by HMRC and those who are sophisticated investors.

So what should advisers do differently?

For most advisers little is likely to change as a result of the No Safe Havens 2019 strategy. Caution should be exercised when HMRC say they have information linking a client to a particular offshore bank account or asset. It does not necessarily mean something is wrong. We have seen many examples where HMRC's data itself is incorrect. Also advisers need to be alert to cases where taxpayers have legitimately overlooked something from years gone by, foreign pension pots or student bank accounts are common examples. Depending on the severity of the mistake, there remain many options for bringing a client's offshore tax affairs up-to-date. The Worldwide Disclosure Facility remains open, or in the more serious cases where there could be an accusation of deliberate behaviour, then the Contractual Disclosure Facility may be considered.

In summary, the 2019 strategy is both positive and modern in its ideas and approach. However its true effectiveness will depend on the implementation and results achieved by HMRC in the next five years.

Source URL: https://www.taxadvisermagazine.com/article/flexing-muscles