An Inspector Calls – A Practical Guide to Surviving an HMRC Investigation

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HM Revenue & Customs

We've got what it takes, to take what you've got.

First – A Confession!

I Used to be a Tax Inspector!

But the Good News Is……

- ……I aren’t any more!

- But I keep close on what my former colleagues are up to

Audience Make Up?

- Practice?
- Industry?
- At the wrong event?

Agenda

- Some context – tax on the front page
- A beleaguered HMRC?
- HMRC's achievements
- The tax investigations landscape
- In the beginning….
- Fees and paying
- Rules of engagement
- Particular focus – the Employer Compliance Review

Agenda - continued

- Record keeping – best practice
- Penalties
- Task Forces
- Campaigns
- Managing Deliberate Defaulters
- Naming and Shaming
- Amnesties – an opportunity?
- Questions & Answers

Tax on the Front Page

Daily Mail online 10 May 2013 - Dave Hartnett continues to attract attention!

"Former UK tax chief who 'lied to MPs' to advise HSBC bank about honesty"

Channel 4 News 24 April 2013 – regarding HMRC's dilemma

"The public accounts committee could not be clearer: HMRC is "fighting a battle it cannot win", while accountants are using their cosy relationship"

Tax on the Front Page

The Guardian 22 April 2013 – regarding Volker Beckers' (former npower chief) new appointment as a non-executive director at HMRC

" Ian Lavery MP, a member of the Commons Energy and Climate Change select committee, whose questioning led to npower's admission, said: "(Chancellor) George Osborne has serious questions to answer about why he has appointed the boss of an energy firm which paid no corporation tax in the last three years, despite making £766m in profits, to the board of HMRC. HMRC has a bad enough record at stopping tax avoidance as it is.""

Tax on the Front Page

Daily Mail Online 25 March 2013 – regarding Lin Homer – Chief Executive of HMRC

“How did this woman get put in charge of our taxes? MPs attack 'catastrophic failure of leadership' by former boss of chaotic Border Agency who was PROMOTED to lead revenue and customs”

What Are HMRC All About?

A Beleaguered HMRC?

In practice – I think not!

- Ground-breaking agreements with Offshore jurisdictions
- Good track record of success in Tax Tribunal hearings
- Much more focussed investigatory techniques
- Political and press groundswell against tax avoidance
- Undoubted success in bringing in extra tax – “closing the tax gap”

HMRC Achievements

HMRC's Achievements Since 2010 in numbers (source – HMRC Compliance Progress Report – March 2013)

- £16.7 billion - How much additional revenues HMRC collected from compliance work in 2011-12 – £2.8bn more than in 2010-11. HMRC were on track to beat this in 2012-13.

- 33 - The number of changes to tax law introduced by this Government to close down tax avoidance loopholes, protecting billions of pounds of tax revenues.

HMRC Achievements

- 59 - The number of tax avoidance cases in tribunals and courts that we have won since April 2010,with billions of pounds at stake

- 3,000 - The number of tax evaders HMRC have put in their Managing Deliberate Defaulters programme, subjecting their tax affairs to close scrutiny for up to five years.

- £5 billion - The amount of tax revenue that HMRC expects to raise as a result of the ground-breaking agreement with Switzerland.

- £1 billion - The amount of additional revenue expected from the UK's new agreements with the Isle of Man, Guernsey and Jersey

HMRC Achievements

- £500 million - How much revenue HMRC's High Net Worth Unit has brought in from the 5,600 wealthiest individuals. HMRC's affluent teams, who deal with the next tier down of wealthy individuals have brought in £98 million since 2010

- 91% - HMRC's success rate in court cases having prosecuted more than 1,560 individuals for tax crimes.

- 40 - The number of specialist taskforces HMRC has launched since May 2011, investigating more than 5,500 businesses and individuals, bringing in almost £90 million in additional revenue from cases that have been settled. 40 taskforce cases have been referred for criminal investigation

HMRC Achievements

- 8,000 - How many disclosures HMRC has received from nine disclosure campaigns, securing around £100 million from voluntary disclosures and follow-up enquiries

The Tax Investigations Landscape

- Types of investigation? - Corporation tax, income tax (including partnerships), PAYE/NIC (the Employer Compliance Review), VAT inspection, Stamp Duty Land Tax, National Minimum Wage, Excise Duties – and many more.
- “Compliance Checks”
- Consider Code of Practice – COP 11 & 14 – Local Compliance
- COP 8 & COP 9 – Specialist Investigations
- Criminal Investigation

The Tax Investigations Landscape

- Risk based
- Some people “get it right”
- Data, data, data
- Facilities, campaigns and “amnesties” – self filed investigations
- Taskforces – back to the future?
- And then there’s the rest

In the Beginning….

- What have I got?
- Where is it from?
- Who is it from?
- Can it be done?

Fees & Paying

- A cost of business
- Insured or uninsured
- Little and often?
- The wobble
- Deductibility
- Redress from HMRC

Rules of Engagement

- The risk assessment – focus -vs- fishing
- Time pressures and deadlines, the 30 day rule
- Notices – delayed pain
- “Reasonable” and “for the check”
- Right or right now, but not both

Rules of Engagement

- Anything wrong – the power of disclosure
- Anything wrong – the power of hard cash
- Scope creep

Rules of Engagement

- Recomputation of profits or income: -
- Business modelling, caution!
- I have found only one apparently issue-free set of Annual Accounts for XXX that I can place any reliance on as to accuracy; the 2007 ones
- I referred to HMRC's business information unit to check the industry-wide GPR's that apply to businesses with trading activities similar to XXX's and found 53 to 55% to be appropriate
- EM3520 - Business Models: Comparison with Private Side

Rules of Engagement

- Recomputation of profits or income:
- RPI adjustment
- the most appropriate way to calculate adjustments for earlier years is to scale back the current year figure by reference to the Retail Price Index (RPI) (EM2012)
- Private side and private spending
- Capital statements

Rules of Engagement

- No right or wrong way
- Be investigative
- Be picky
- 4 years
- 6 years
- 20 years

Particular Focus – The Employer Compliance Review

- Risk based selection methods
- Local knowledge/high profile activity
- P & L headings that are favourites:
  - Travel and subsistence
  - Advertising
  - Sponsorship
  - Promotions
  - Cost of Sales

Particular Focus – The Employer Compliance Review

- Detailed nominal reviews
- Use of IDEA
- Sample approach extrapolated to full period
- Earlier years - 4 years, 6 Years or 20 years
- Penalties

Particular Focus – The Employer Compliance Review

BIM45020 - Specific deductions: entertainment: expenditure which is not allowable

Expenditure that is incidental is not allowable

Expenditure on business entertainment is not allowable as a deduction against profits. Nor may a deduction be made for any expenditure which is incidental to business entertainment - ITTOIA05/S45 (4) and CTA09/S1298 (5).

Particular Focus – The Employer Compliance Review

The meaning of 'incidental' is not defined but you should interpret it to mean any expenditure that is incurred directly or indirectly in connection with the provision of entertainment. This might include payments to a third party for the organisation of entertainment or the costs of issuing invitations to customers. It will also include the cost of maintaining assets, such as yachts, which are used for business entertainment purposes. Guidance on travelling costs is given at BIM45025

Particular Focus – The Employer Compliance Review

Areas to consider: -

- Sampling approach reasonable?
- Any “one off” non-representative aspects
- Direct tax time limits
- VAT time limits
- Penalty – behaviour
- Penalty - suspension

Record Keeping – Best Practice

Two worlds: -

- The HMRC world
- The real world!

Record Keeping – Best Practice

- http://www.hmrc.gov.uk/ct/managing/record-keeping.htm

If your company is registered at Companies House, you must keep and retain certain accounting records showing your company's transactions and its financial position. You have to do this even if your company is not currently trading or no longer trading. These records include: -

- *a record of your company's assets, for example, a record of 'capital expenditure' such as the purchase and sale or disposal of company assets, equipment, office furniture and vehicles*
- *a record of your company's liabilities*
- *a record of your company's income and expenditure*
- *details of any stock on hand at the end of the company's financial year*

Generally, if your company keeps these records, you will not need to keep any more for Corporation Tax

Record Keeping – Best Practice

The business records that your company or organisation must keep for Corporation Tax purposes must: -

- *be complete and up to date*
- *allow you to work out correctly the amount of Corporation Tax you owe to HM Revenue & Customs (HMRC), or can reclaim from HMRC*
- *allow you to file an accurate Company Tax Return*
- *be easily accessible if HMRC asks to see them during an enquiry into your Corporation Tax affairs*

Record Keeping – Best Practice

You may find it useful to keep certain business records, for example:

- *annual accounts, including your profit and loss statement and balance sheet*
- *bank statements and paying-in slips*
- *a cash book and any other account books you keep*
- *purchases and sales books or ledgers*
- *invoices and any record of daily takings such as till rolls*
- *order records and delivery notes*
- *a petty cash book*
- *other relevant business correspondence*

Record Keeping – Some Additional Thoughts from Me!

- Best practice tips: -

  - Clear policies on Income recognition, purchase and expense recording, entertaining and travel expenses

  - Clear communication within organisation

  - Understanding and diligence in finance function

  - Understandable employee responsibilities

Penalties

- From 1 April 2009 – “new” penalties charged for errors
- Still have “old” system for pre-1 April 2009 liability

Penalties

What are the main principles of the new penalty systems?

- *supporting those who seek to comply but coming down hard on those who seek an unfair advantage through non-compliance*
- *being simple to understand and administer, efficient and effective*
- *being a deterrent but also offering positive encouragement for a person to talk to HMRC if they think they might not have paid the right amount of tax*
- *recognising the seriousness placed on non-compliance*
- *providing a fair balance between the powers needed and safeguards for customers*
- *being proportionate in response to the risk involved*

Penalties

No penalty	Max 30%	Max 30%	Max 70%	Max 70%	Max 100%	Max 100%
Reasonable care	**Careless: unprompted**	**Careless: prompted**	**Deliberate: unprompted**	**Deliberate: prompted**	**Deliberate and concealed: unprompted**	**Deliberate and concealed: prompted**
No penalty	Min 0%	Min 15%	Min 20%	Min 35%	Min 30%	Min 50%

Task Forces

- What is a Task Force?

- *Taskforces are specialist teams that undertake intensive bursts of activity in specific high-risk trade sectors and locations in the UK. The teams visit traders to examine their records and carry out other investigations*

Current Task Forces (September 2013)

- the construction industry in London – set to bring in £3 million
- hidden wealth in the Midlands – including people with offshore accounts and those living lifestyles beyond their obvious means through assets from undeclared income. This will recover over £3 million
- the hidden economy in the second-hand motor trade in the Midlands – which will recover over £3 million

Task Force Results

- HMRC has collected more than £90 million as a result of taskforces launched since 2011-12. It expects to bring in over £90 million per year from taskforces launched over the next three years

Campaigns

Campaign	Revenue as of 31 July 2013
Tax Catch Up Plan	£1,248,000
Plumbers Tax Safe Plan	£9,603,000
Electricians Tax Safe Plan	£1,285,000

Campaigns

Campaign	Revenue as of 31 July 2013
Direct Selling	£252,000
Offshore New Disclosure Opportunity	£124,300,000

Campaigns

Campaign	Revenue as of 31 July 2013
E-Marketplaces £3,762,000	
Offshore Disclosure Facility £508,590,000	
TOTAL	£802,864,000

Managing Deliberate Defaulters (“MDD”)

- HMRC launched the Managing Serious Defaulters programme (formerly known as Managing Deliberate Defaulters programme) in February 2011 to: -
- deter known defaulters from returning to non-compliant behaviour
- effect a permanent shift to compliant behaviour
- deter potential deliberate defaulters
- reassure people who do pay their tax that HMRC does take action against deliberate defaulters

MDD – Who is Affected?

The original MDD programme brought in people: -

- charged a penalty for a deliberate offence under specific taxes legislation or otherwise identified, during a Civil Investigation of Fraud, as presenting a continuing high risk to HMRC; or

- successfully prosecuted by the Director of Revenue & Customs Prosecutions or another prosecuting authority for a tax matter.

MDD – Who is Affected?

From 1 April 2013, the Managing Serious Defaulters programme also includes people: -

- charged a civil evasion penalty for dishonesty;
- who have given security in respect of VAT, Environmental Taxes, PAYE or NICs; or
- who try to get out of paying what they owe by becoming insolvent. Only those where Insolvency Practitioners pursue claims for recovery of money or assets on behalf of HMRC will be brought within the programme

Publishing Details of Deliberate Defaulters ("PDDD") – Naming & Shaming

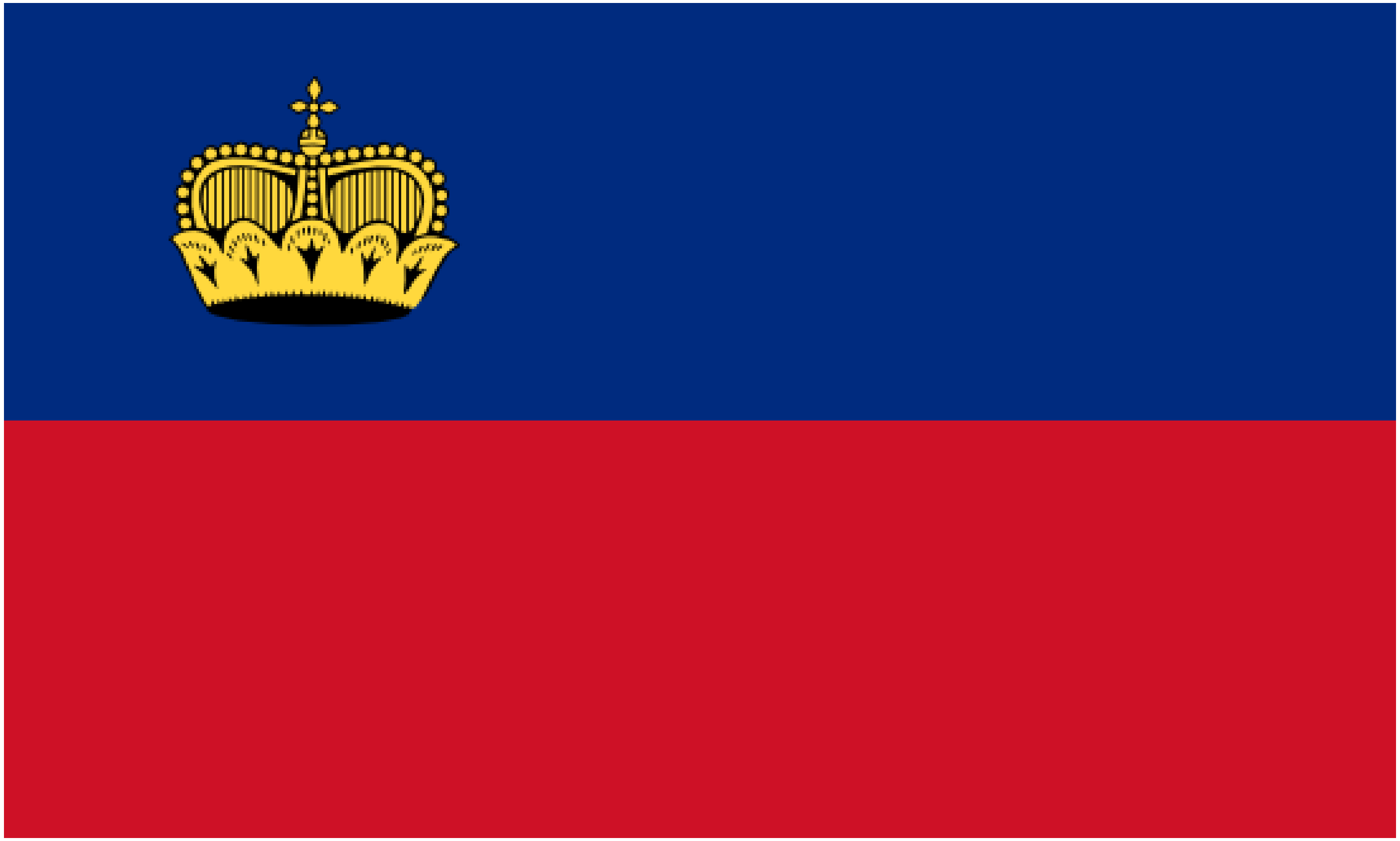
Section 94 Finance Act 2009

- HMRC may publish information about a deliberate tax defaulter where: -
- HMRC have carried out an investigation and the person has been charged one or more penalties for deliberate defaults; and
- those penalties involve tax of more than £25,000.
- However, their information will not be published if the person earns the maximum reduction of the penalties by fully disclosing details of the defaults.
- HMRC will publish sufficient information to identify the deliberate tax defaulter, the penalties imposed for their deliberate defaults and the amount of tax on which those penalties are based.
- HMRC will publish this information once these penalties are final.

Tax Amnesties – An Opportunity?

- Liechtenstein Disclosure Facility
- Manx Disclosure Facility
- Guernsey Disclosure Facility
- Jersey Disclosure Facility
- Switzerland

Liechtenstein Disclosure Facility



Liechtenstein Disclosure Facility

Key Points: -

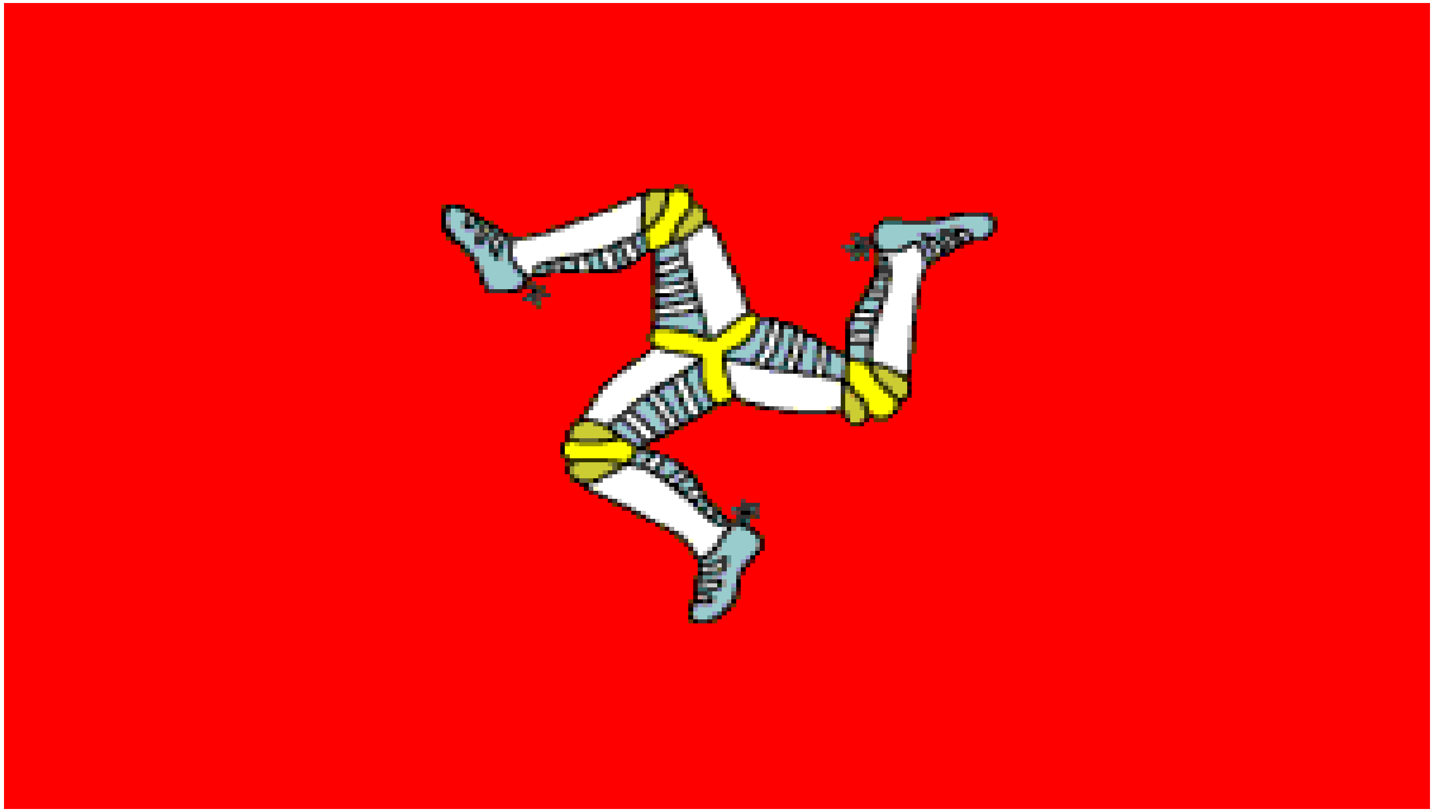
- A 10 per cent fixed penalty on the underpaid liabilities (full interest will have to be paid);
- No penalty where an innocent error has been made;
- Assessment period limited to accounting periods/tax years commencing on or after 1 April 1999;
- The option to choose whether to use a single composite rate of 40 per cent or to calculate actual liability on an annual basis;
- Assurance about criminal prosecution; and
- Single point of contact for disclosures

Liechtenstein Disclosure Facility

• Total Yield	-	£700 million
• Settlements	-	2,028
• Settlements over £5 million	-	6
• Average settlement per case	-	£170,000

- All as at 31 July 2013

Manx Disclosure Facility ("MDF")



MDF

Key points: -

- A 10% fixed penalty on the underpaid liabilities (full interest will have to be paid) for years up to and including 2007/2008 and a 20% fixed penalty for 2008/2009 onwards (for most cases);

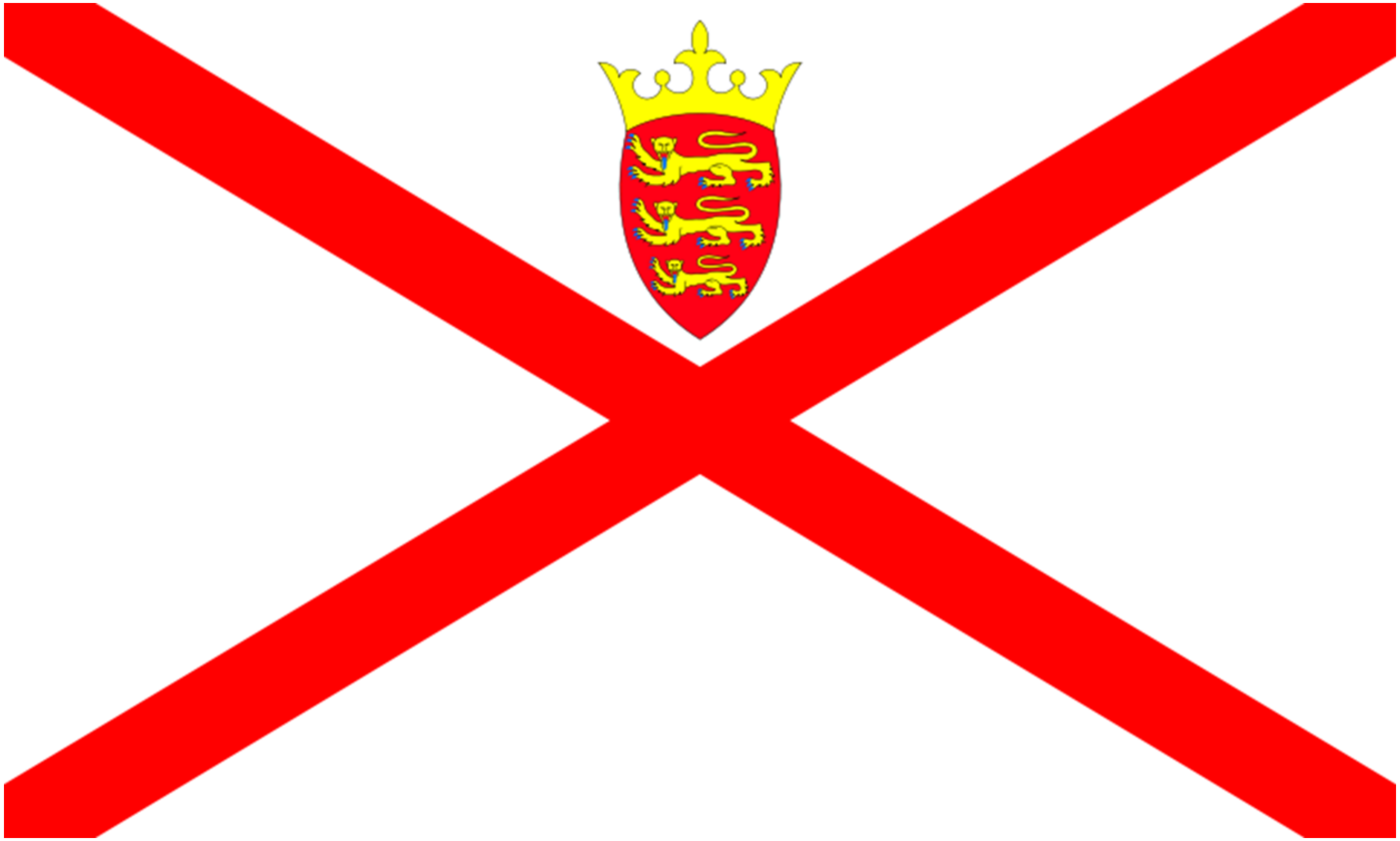
- No penalty where reasonable care has been taken;

- An assessment period limited to accounting periods/tax years commencing on or after 1 April 1999 (for most cases); and

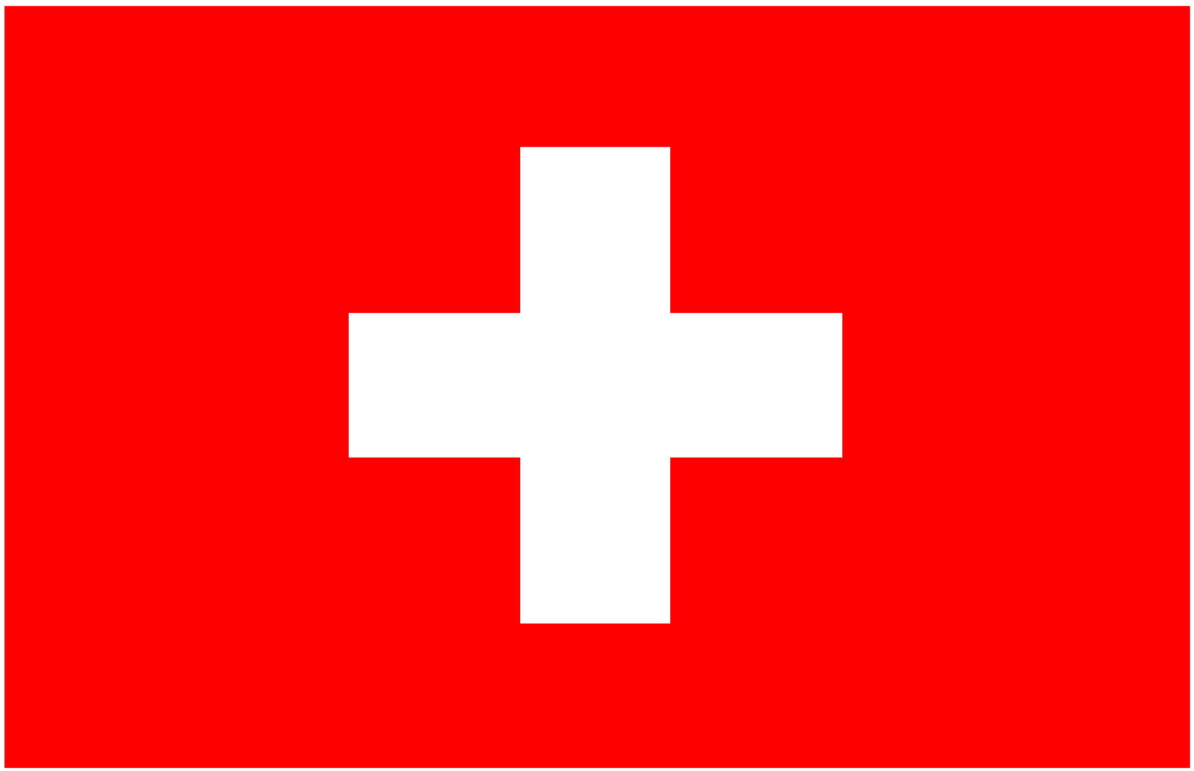
- A single point of contact for disclosures.

Guernsey Disclosure Facility

Jersey Disclosure Facility



Switzerland?



Switzerland?

- Not a disclosure facility!
- UK compliant?
- One-off payment
- Future withholding tax (unless UK compliant)

Summary

- HMRC very active
- Targeted enquiry methods
- Be aware what you are up against
- HMRC generally very professional – but will take liberties if not challenged
- Disclosure and cooperation always a good idea
- Consider disclosure opportunities
- If in doubt – seek suitably qualified help!

- Questions?

Thank you

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