

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

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The logo for the Association of Accountants and Taxifiers (AAT), consisting of the lowercase letters 'aat' in a bold, sans-serif font, with a horizontal line through the top of the 't'.



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
- HMRC on the front foot?
- HMRC's achievements
- The tax investigations landscape
- Taskforces & campaigns
- Tax avoidance and offshore developments
- In the beginning....
- Fees and paying
- Rules of engagement
- Particular focus – the Employer Compliance Review



Agenda - continued

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



Tax on the Front Page

The Independent – regarding the recent Tax Tribunal ruling on the Icebreaker scheme

“Celebrities ‘hid £340m’ in Icebreaker tax avoidance scheme used by Gary Barlow”

Margaret Hodge said he should hand his OBE back!



Tax on the Front Page

The Guardian – regarding HMRC’s increasingly aggressive approach to debt management

“HMRC doubles its use of bailiffs to recover unpaid tax.”

£14.8 million spent on external debt recovery agencies in 2013



Tax on the Front Page

The Independent – regarding HMRC’s proposed new powers to recover tax debts directly from bank accounts

“Money alert: HMRC's tax snatch from your bank account”



Tax on the Front Page

BBC News – regarding HMRC advertising campaign aimed at tackling offshore tax evasion and consultation upon making it easier to criminally investigate offshore tax evasion: -

“HMRC targets tax evaders with offshore accounts”.

What Are HMRC All About?





HMRC – on the front foot?

- 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 recently announced the 2014 figure - £23.9 billion.
- 33 - The number of changes to tax law introduced by this Government to close down tax avoidance loopholes, protecting billions of pounds of future 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, Capital Gains Tax, Inheritance Tax – 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
- Data, data, data
- Facilities, campaigns and “amnesties” – self filed investigations
- Taskforces – back to the future?
- Counter-avoidance work on a grand scale
- And then there’s the rest



Taskforces

- Taskforces – back to the future?
- Short sharp shock
- Where are they now?
- Care needed



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

Campaigns are designed to: -

- help people to bring their tax affairs up to date
- help them keep them that way, and
- help stop them getting it wrong in the first place



Campaigns

How do they do it?

- providing opportunities that make it easier to be compliant
 - including offering an incentive to self-correct
- bringing together a basket of activities to encourage voluntary compliance in the target population
- looking for opportunities to inform customers who are entering the targeted risk area for the first time



Campaigns

Campaign results: -

- HMRC campaigns have collected over £580 million in tax for disclosures
- A further £283 million has been collected from a large number of follow-up activities
- A number of criminal investigations are underway
- Eight people have been convicted of cheating the public revenue, with custodial sentences totaling in excess of 10 years handed down and leading to the recovery of £593,000



Campaigns

Campaign
2013

Revenue as of 31 July

Tax Catch Up Plan
£1,248,000

Plumbers Tax Safe Plan
£9,603,000

Electricians Tax Safe Plan
£1,285,000



Campaigns

Campaign
2013

Revenue as of 31 July

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



Current Campaigns

- Second incomes
- Let property



Tax Avoidance

- HMRC have invested massively in counter avoidance
- Trying to change public attitudes towards tax avoidance
- Challenge for all – where to draw the line?
- Duke of Westminster case
- “The difference between tax avoidance and tax evasion is the thickness of a prison wall”



Counter-Avoidance on a Grand Scale

- Huge redeployment of resource into tackling tax avoidance
- Litigation success
- DOTAS
- “Nudge” letters
- Automation of processes
- “Followers” regime
- Accelerated Payments
- Access to bank accounts?



Offshore Activity

The Treasury's message to those indulging in offshore tax evasion: -

“....if you are hiding undeclared income offshore, HMRC is closing in on you.

So come forward now before they come to you.....”

David Gauke

Exchequer Secretary to the Treasury



Offshore Activity

What is offshore evasion according to UK Treasury?

“Offshore evasion is using another jurisdiction’s systems with the objective of evading UK tax.

This includes:

- moving UK gains, income or assets offshore to conceal them from HMRC;*
- not declaring taxable income or gains that arise overseas, or taxable assets kept overseas; and*
- using complex offshore structures to hide the beneficial ownership of assets, income or gains.”*



Offshore Activity

- Worldwide effort – G8 coordination
- Consultation on new legislation to make prosecution for tax evasion using offshore structures easier
- Tougher new civil sanctions
- Greater automatic exchanges of information between jurisdictions
- Increased bank disclosure
- Rewards to whistleblowers



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 the organisation
 - Understanding and diligence in the 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

- Errors in return – penalty charged
- From 1 April 2009 – “new” penalties charged for errors
- Why change? Per HMRC:
 - *The Government designed the legislation to make the tax system simpler and more consistent*
 - *During the consultation, customers and their agents said they wanted a fair system and told HMRC to do more to support those who tried to get their tax right, but come down hard on those who tried to get an unfair advantage by not complying*

What are HMRC penalties definitely, honestly, really not about?





The Behaviours

- Error penalties now rely on agreeing “behaviour”
- Was the mistake or error:
 - Despite taking reasonable care
 - Careless
 - Deliberate
 - Deliberate and also concealed

The Behaviours – “Took Reasonable Care”

- reasonably arguable view of situation that is subsequently not upheld
- an arithmetical or transposition inaccuracy that is not so large either in absolute terms or relative to overall liability, as to produce an obviously odd result or be picked up by a quality check
- following advice from HMRC that later proves to be wrong, provided that all the details and circumstances were given when the advice was sought
- acting on advice from a competent adviser which proves to be wrong despite the fact that the adviser was given a full set of accurate facts
- accepting and using information from another person where it is not possible to check that the information is accurate and complete

(Source <http://www.hmrc.gov.uk/manuals/chmanual/ch81130.htm>)



The Behaviours – “Careless”

- ‘careless’ - a failure to take reasonable care
- what the person did or failed to do and asking whether a prudent and reasonable person would have done that or failed to do that in those circumstances
- repeated inaccuracies may form part of a pattern of behaviour which suggests a lack of care

(Source <http://www.hmrc.gov.uk/manuals/chmanual/ch81140.htm>)

The Behaviours – “Deliberate but not concealed”

- a person gives HMRC a document that they know contains an inaccuracy
- systematically paying wages without accounting for operating PAYE or Class 1 NICs
- knowingly failing to record all sales
- deliberately describing transactions inaccurately or in a way likely to mislead

The Behaviours – “Deliberate but not concealed”

- deliberately not making any attempt to ensure that money withdrawn for personal use from an incorporated business is treated correctly for tax purposes
- deliberately failing to take action that they know is necessary to ensure a return is accurate

(Source <http://www.hmrc.gov.uk/manuals/chmanual/ch81150.htm>)

The Behaviours – “Deliberate and concealed”

The most serious level of evasion where a deliberate inaccuracy is given to HMRC **and** active steps have been taken to hide the inaccuracy either before or after the document has been sent

- creating false invoices to support inaccurate figures in the return
- backdating or postdating contracts or invoices
- creating false minutes of meetings or minutes of fictitious meetings
- destroying books and records so that they are not available

The Behaviours – “Deliberate and concealed”

- systematically diverting takings into undisclosed bank accounts and covering the traces
- invoice routing, for example the purported sale or purchase of goods through a tax haven company (with no activity undertaken by that company even though contracts exist showing the contrary) leaving profits untaxed in that company
- describing expenditure in the business records in such a way as to make it appear to be business related when it is in fact private (possibly with the supplier agreeing to change the description on the relevant invoices)

(Source <http://www.hmrc.gov.uk/manuals/chmanual/CH81160.htm>)

Penalties – worked example

- Company ABC Ltd
- Finds error in entertaining – failed to add back Golf Day £15,000
- Voluntarily contacts HMRC to advise
- HMRC raise enquiry
- HMRC also find:
 - taxis for entertaining events £7,500
 - capital allowances on rebuild £72,500
 - Director credit card spending private £22,500

Penalties – worked example - adjustments

- 15,000 for golf day - unprompted, careless?
- 7,500 for taxis - prompted, careless?
- 72,500 for cap allces - prompted, took reasonable care?
- 22,500 for director - prompted, deliberate?

– Tax arising:

– Golf day	– 15,000 @ 29%	=	£4,350	
– Taxis	– 7,500 @ 29%	=	£2,175	
– Cap allces	– 72,500 @ 29%	=	£21,025	
– Director	– 22, 500 @ 29%	=	£6,525	= £34,075

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Penalties – worked example – the good

- Golf day - careless, unprompted
 - £4,350 @ 0% = £0
- Taxis - careless, prompted
 - £2,175 @ 15% = £326 - suspended?
- Cap allces - took reasonable care
 - £21,025 @ 0% = £0
- Director - careless, prompted
 - £6,525 @ 15% = £978 - suspended?
- **TOTAL PENALTY** **£NIL** 😊
- (or £1,304 = 3.8%)

Penalties – worked example – the bad

- Golf day - careless, unprompted
 - £4,350 @ 30% = £1,305 - not suspended?
- Taxis - careless, prompted
 - £2,175 @ 30% = £652 - not suspended?
- Cap allces – careless, prompted
 - £21,025 @ 30% = £6,308 - not suspended?
- Director - deliberate, prompted
 - £6,525 @ 70% = £4,567

• **TOTAL PENALTY** **£12,832 (or 37.7%)** ☹️

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Penalties – defences?



Penalties

No penalty	Max 30%	Max 30%	Max 70%	Max 70%	Max 100%	Max 100%
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**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%

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 (“PDDDD”) – 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.

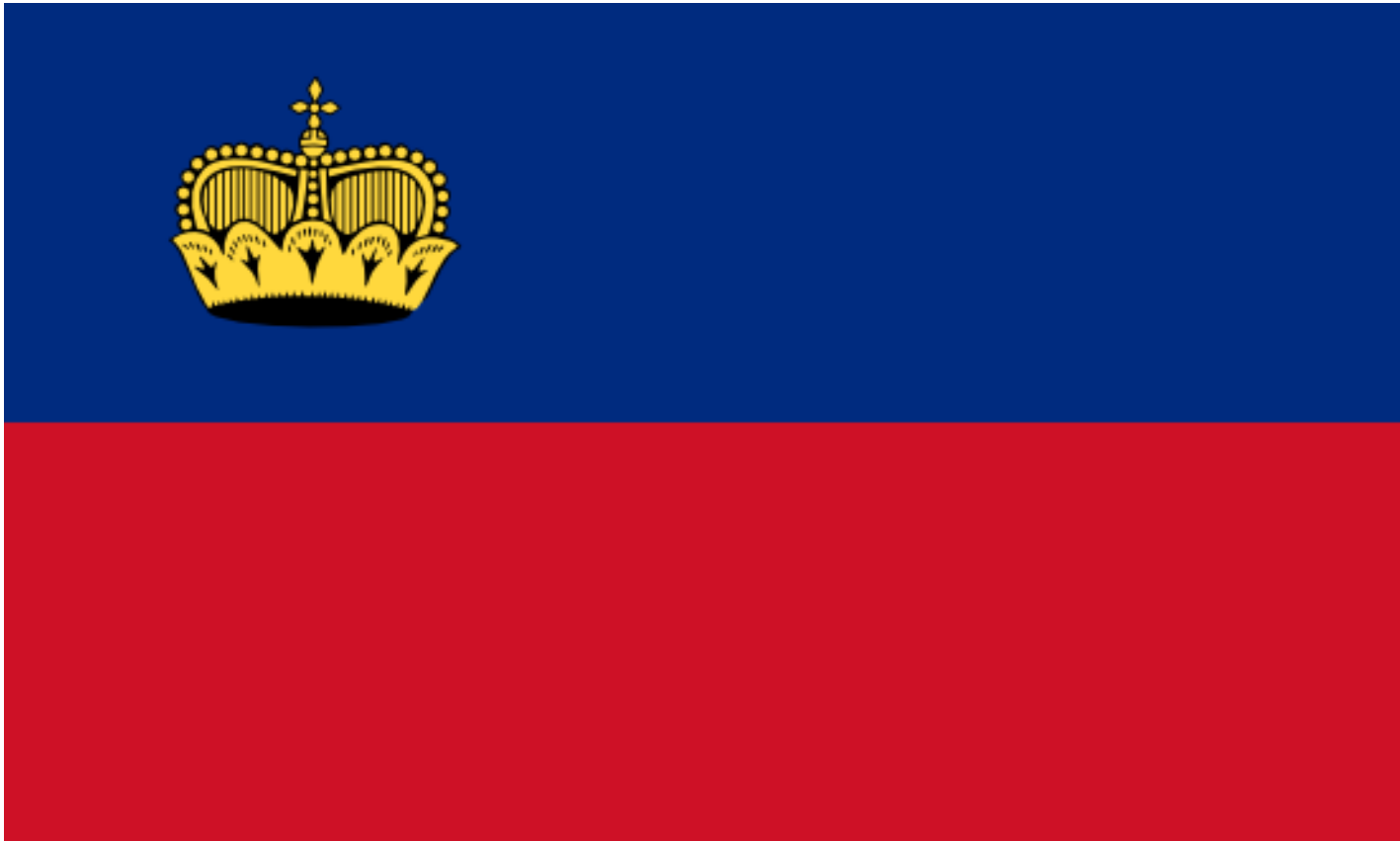
ce Act 2009



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: -

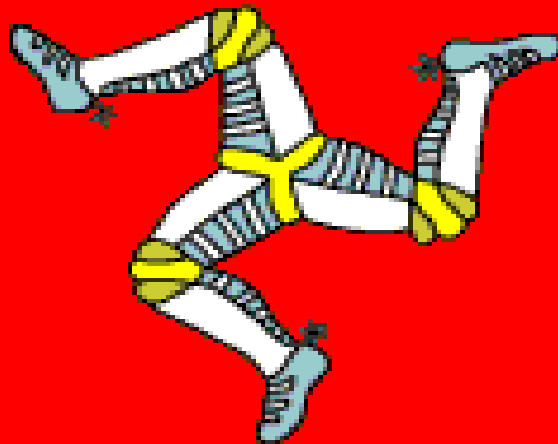
- A 10 per cent fixed penalty on the underpaid liabilities (full interest will have to be paid);
- No penalty where an innocent error has been made;
- Assessment period limited to accounting periods/tax years commencing on or after 1 April 1999;
- The option to choose whether to use a single composite 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: -

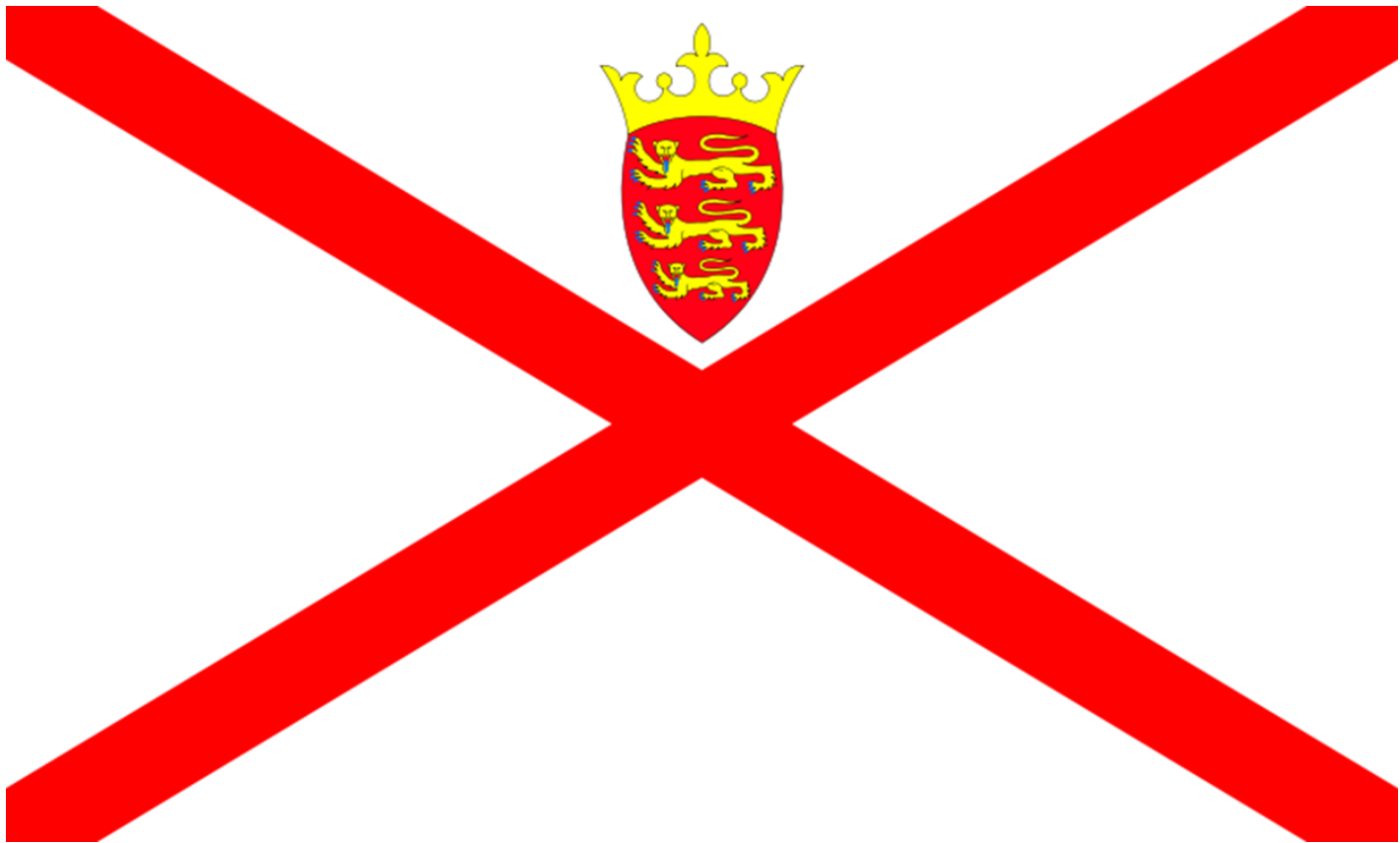
- A 10% fixed penalty on the underpaid liabilities (full interest will have to be paid) for years up to and including 2007/2008 and a 20% fixed penalty for 2008/2009 onwards (for most cases);
- No penalty where reasonable care has been taken;
- An assessment period limited to accounting periods/tax years commencing on or after 1 April 1999 (for most cases); and
- A single point of contact for disclosures.



Guernsey Disclosure Facility

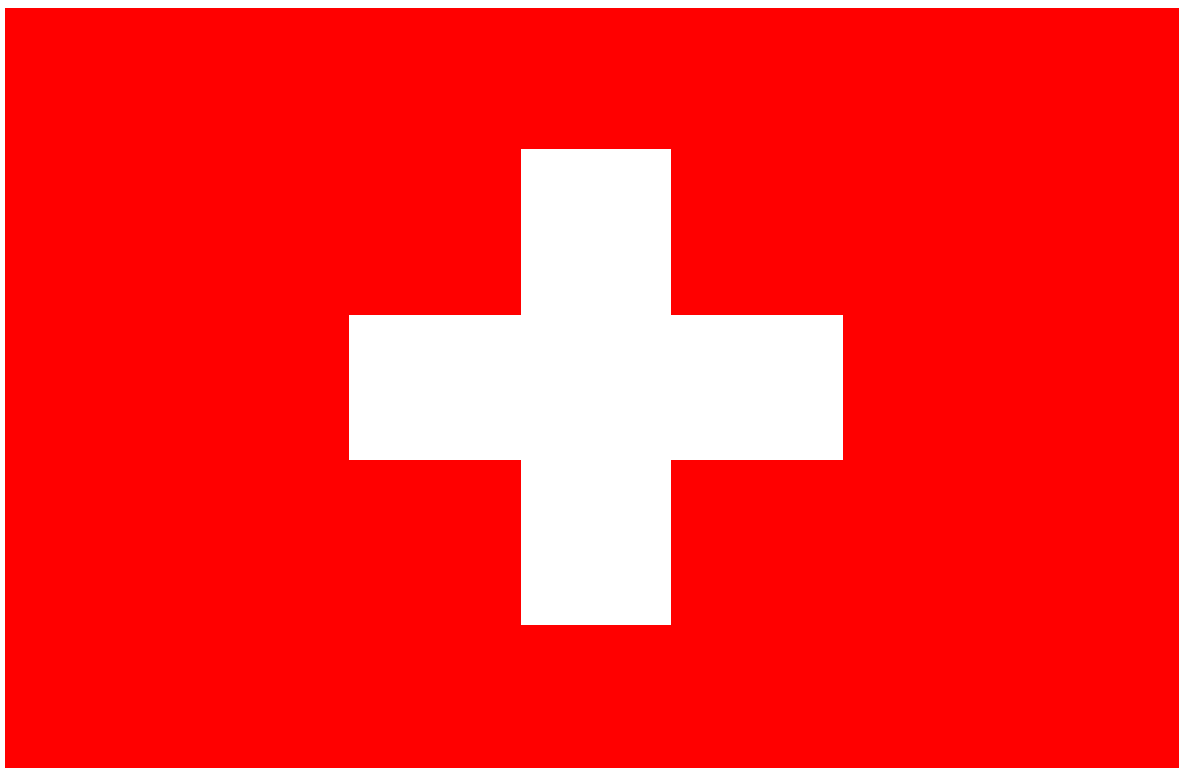


Jersey Disclosure Facility





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!
- Changing environment
- Beware HMRC tactics
- Be aware of developments
- Remember the 3 biggest lies.....



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= Questions?

= Thank you

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