

HMRC Probes Offshore Bank Accounts

Thousands of people with offshore bank accounts could face investigation by HM Revenue & Customs (HMRC) after a Special Commissioner ruled that Barclays Bank had to hand over customer information.

HMRC said it was aware that out of 9,300 Barclays customers with UK addresses and accounts outside the UK, only 3.5% of them had declared any foreign income. The Commissioner made it clear that Barclays was not at fault.

Investigations are likely to be extended to other banks and financial institutions and will not

be limited to unpaid tax on bank interest. HMRC will also want to trace the sources of the funds held in offshore accounts as it believes such accounts are often used to evade tax on business profits.

HMRC started cracking down on offshore accounts following the implementation last July of the European Union Savings Directive, which allows EU states and some offshore territories including Jersey, the Isle of Man and Guernsey to exchange more details about bank accounts.

Last year around 500 individuals received letters from HMRC asking them why they had not

declared the interest from their overseas accounts on their UK tax returns. Individuals who are resident and domiciled in the UK are taxable on investment income wherever in the world it arises.

Those who are resident in the UK but domiciled elsewhere are liable to tax on overseas investment income only if they bring it into the UK.

Anyone who does not disclose all of their interest in reply to such a letter is likely to face a full enquiry, often by a specialist



HMRC investigation office. It is essential for you to declare any overseas interest on your UK tax return unless you are not domiciled in the UK and do not remit the income.

If you receive an enquiry from HMRC, please let us know immediately.

Divorce Verdicts – Implications for Assets

Decisions in three recent divorce cases involving wealthy couples are likely to set an important precedent for many less wealthy people faced with splitting income and assets when their marriage, or civil partnership, breaks up.

In the case involving Mr and Mrs Miller, the House of Lords upheld an award of £5 million to Mrs Miller out of Mr Miller's assets of around £17.5 million, even though the marriage had lasted less than three years.

The Lords took into account the large sums Mr Miller had earned during the marriage and the fact that Mrs Miller was entitled to

think that her financial position would last for life.

In the McFarlane case, where the couple had been married for 16 years, the Lords accepted that Mrs McFarlane should be compensated for the loss of her earnings potential as a result of giving up work to look after their children. In the past, she would have received maintenance based only on her financial needs.

These two decisions will potentially affect all divorce settlements where there is money left over after meeting reasonable financial needs. If a spouse has high income compared to assets, the principles established in these

cases may override the aim of achieving a clean break.

The third case concerned the treatment of a pension. Both parties had sought a clean break and the district judge had valued their assets and decided that a fair split would be 57% to the wife and 43% to the husband. The husband's share included his pension valued at £940,490.

The Appeal Court held that a pension in payment was different from saleable assets, because it could not appreciate in value and did not survive the scheme member's death. The pension should therefore be shared rather than offset against other assets that had been allocated to the wife.

Westgate House,
Royland Road,
Loughborough,
Leics LE11 2EH

telephone
01509 212890

email
services@turnerandsmith.co.uk

fax
01509 212768

www.turnerandsmith.co.uk

Partners:
RJ Lester FCA
R Neal FCA
RA Graham FCCA

Tax Manager:
RW Bradley BA(Hons), ATT



Registered to carry on audit work by the Institute of Chartered Accountants in England & Wales and authorised and regulated by the Financial Services Authority in carrying out investment business.

Trusts Back from the Brink

You may still need to review your estate planning following this year's changes to the taxation of trusts – but the wholesale need to rewrite wills has been averted following changes to the Finance Act as it went through Parliament.

Where a will provides for a life interest to a spouse or civil partner, this will be free of tax under the spouse exemption. Such arrangements are often used by people who have remarried and wish to provide their present partner with an income or a right to live in property, but want the capital to pass to the children of their first marriage. They can also protect your children's inheritance in case your surviving partner remarries after your death.

Another change will allow trustees of accumulation and maintenance (A&M) trusts to retain control of the trust assets

until beneficiaries are 25, although there will still be a tax charge of up to 4.2% of the value of the assets when they leave the trust if the beneficiary is over 18.

The original proposals in the Finance Bill would have brought all A&M trusts into the discretionary trusts regime, with tax charges of up to 6% every ten years, unless the trust provided for capital to pass absolutely to the beneficiary at age 18. Many parents and others felt that this was far too young for most children to come into what might be a great deal of money.

Existing A&M trusts will remain free of inheritance tax up to 5 April 2008. After that

date they will come under the new A&M trusts rules, provided the beneficiary will take the trust assets absolutely by the age of 25. Despite the age relaxation, the terms of the trust should still be reviewed over the coming months to make sure that they will not inadvertently fail to qualify for the new rules and become subject to the full discretionary trusts regime.

The maximum 4.2% will only be charged where the assets stay in the trust until the beneficiary is 25. Where property leaves the trust when the beneficiary is over 18 but under 25, the charge will be 0.15% for every full three-month period by which the beneficiary is over 18.

The nil-rate band, currently £285,000, will be available, after deducting any chargeable transfers that the settlor made in the seven years before setting up the trust. In most cases, therefore, if the value of trust property is not more than £285,000, there will be no inheritance tax to pay.

New trusts set up by grandparents after 21 March 2006 will be treated as discretionary trusts. New trusts will only escape ten year charges if they come into being under the will of a deceased parent, as well as satisfying the requirement for the beneficiary to take the property absolutely by age 25.



Tax Return Filing Dates May Change

Taxpayers are likely to have to file self-assessment returns three months earlier than presently required unless they switch to online filing.

The Carter Review of the online services of HM Revenue & Customs (HMRC), published with this year's Budget, proposed new filing dates after the end of each tax year of 30 September for paper returns and 30 November for returns filed online. The proposed starting date was autumn 2008. At present, returns must be filed by 31 January after the end of the tax year.

The proposal met with strong opposition from the accountancy profession. Some of the information needed to complete tax returns may not be available until some months after the end of the tax year.

Earlier filing dates would increase the number of forms that include provisional figures, according to a joint survey by eight professional accountancy bodies. This would require further work to amend returns, resulting in increased costs and a longer period in which HMRC could open an enquiry.

As a result Lord Carter has now proposed retaining the 31 January date for online returns and a new date of 31 October for paper returns in an effort to encourage filing by internet.

Despite the 31 January date, mistakes are more likely to be made where clients leave it until the last moment to provide information needed for their returns. Even if the change does not go ahead, it would help us if you would provide your tax return information to us ASAP – that's if you have not already done so.

The Government is also considering aligning the dates for filing company tax returns with HMRC and delivering company accounts to Companies House.

A consultation paper proposed that private companies should have to do both these tasks by seven months (or possibly nine months) after the end of each accounting period. There would be no change in the corporation tax payment date for small companies, which is nine months and one day after the end of the accounting period.

Going Green Costs Less

Improving your environmental performance could benefit your business, contrary to the widespread perception that complying with environmental legislation only means extra costs.

Although keeping up and complying with new legislation can present a major challenge for small businesses, actions such as increasing energy efficiency and recycling of materials can save operating costs and improve customer relations by giving the business good 'green' credentials.

Reducing waste will not only save the growing expense of landfill and hazardous waste disposal, but also the costs of generating the waste in the first place. Reducing packaging will reduce your customers' waste and you could also ask your suppliers to cut the amount of packaging on goods they supply to you.

You could turn down heating a fraction, fit water-saving devices

and separate office waste for recycling. Paper usage can be cut by using emails wherever possible, and by not printing everything out. Businesses that are serious about achieving real change could invest in an Environment Management System (EMS) to help manage their environmental responsibilities and monitor use of energy and materials on a continuous basis.

All businesses must comply with those environmental regulations that affect them or they risk prosecution and fines. Many small businesses find it difficult to keep up with changes in the rules. If you are one of these, you may find the NetRegs website (www.netregs.gov.uk) helpful. It aims to provide clear guidance to small businesses on how to comply with environmental legislation and 'good practice' information that can help you make cost savings and become more competitive.

Business Crime Cost Rises

The cost of crimes against British small and medium-size businesses (SMEs) soared to over £721 million in 2005.

However, the insurance company AXA, which carried out research based on its own claims data, said that the true cost of business crime is much higher because many offences are not claimed for. Nevertheless, companies are making claims – during the last quarter of 2005 (the latest figures available) the number of crime related claims rose by a hefty 27% compared to the previous quarter.

Theft and malicious damage accounted for 95% of all crime

claims settled. But arson, although rare and accounting for only one in 20 business crimes, cost businesses the most, amounting to over 40% of settlement costs.

While it is impossible to stop a determined criminal, there are measures businesses can take to protect their premises, stock and staff from the threat of crime. If you own or manage a business, you should consider a review of the security measures you have in place and conduct thorough and regular risk assessments. AXA also says that many SMEs have inadequate cover and a surprising number are not insured at all.

Pensions White Paper

Employers may face compulsory contributions to their employees' pensions as early as 2012 if proposals in the Government's White Paper on long-term pension provision come into effect. The cost to employers could be £2.3 billion a year, according to one estimate.

The White Paper is the Government's response to recommendations made by Lord Turner's Pensions Commission final report last November. The Government is proposing a new scheme of pension 'personal accounts' to which employees would contribute 4% of earnings – between about £5,000 and £33,000 a year. Employers would make minimum contributions of 3% of the same band of earnings, and a further 1% would come in the form of tax relief – ie a total 8% contribution.

Employer contributions would generally be phased in over three years, although the Government is consulting over whether smaller businesses need a longer transitional period. Employees will be automatically enrolled in either the new scheme or their employer's scheme – provided it meets certain minimum requirements. However, they will have the freedom to opt out – in which case employers would not have to contribute. Self-employed people would be able to opt in, but the White Paper does not suggest any contribution structure for them.

The Government is consulting on whether the new scheme should be state-run or provided by the pensions industry. The White Paper also proposes the restoration of the link between up-rating of the basic state pension and the annual increase in average earnings to take place in 2012 'subject to affordability'. Other changes include a move towards a flat rate of state second pension (S2P), and reducing the number of years needed to qualify for a full basic state pension to 30. These higher pensions will be paid for with a gradual rise in the state pension age, eventually reaching 68 for men and women between 2024 and 2046.

The proposals have moved a stage nearer to realisation since they first appeared in the Turner Report, although much could change before 2012. The White Paper has identified a need to encourage individuals to save more towards their retirement, and even if the details change, it seems likely that employer contributions will be part of any new scheme. Employers, especially those that do not currently contribute to employees' pensions, need to assess the impact on their business and consider ways to mitigate the cost.

For employees already in private sector pension schemes, there may be a downside. Average employer contributions are currently much higher than 3%, but employers may start to see 3% as the norm and level down contributions accordingly.



Contributions totalling 8% will not ultimately produce a generous pension and some employees may have to save more in order to make up for less help from employers.

Age Discrimination

Age discrimination will be against the law from 1 October 2006. With some exceptions, employers will no longer be able to use age-related criteria in recruitment, selection, promotion and entitlement to benefits, nor will they be able to force employees to retire at a specified age.

The Government has now published the final draft regulations, which lay down much of the detail of how the legislation will be applied. Employers will not be allowed

to set a compulsory retirement age below 65 unless they can justify it objectively. Where an organisation sets a compulsory retirement age, employees will have the right to ask to continue working beyond that age and the employer must consider the request seriously.

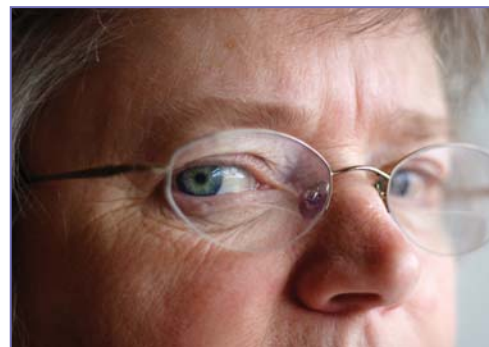
The regulations establish a set procedure for employees who want to continue working beyond 65. If employers follow this procedure employees will not have a case for unfair dismissal where the dismissal is

on retirement grounds. Employers will need to make sure that all their procedures will comply with the new law, otherwise they could face some potentially expensive claims from employees, prospective employees and even some self-employed contractors.

Another area to review is employee share schemes. Many include age-related rules, such as preventing new awards of shares being made to employees near retirement or allowing retiring employees to exercise their options early, while employees leaving for other reasons cannot do so. Rules of this

nature will also be unlawful from 1 October 2006, unless the discrimination is required to comply with specific legislation, such as the tax rules for share incentive plans, or is objectively justifiable, perhaps to recognise employees' experience and loyalty.

Companies should review their share scheme rules and their award criteria now and make any changes needed to ensure compliance.



Part-time Workers' Rights

Part-time workers may find it easier to claim the same benefits as their full-time colleagues after the House of Lords upheld an appeal by the Fire Brigades Union in a test case. The Lords held that 12 part-time fire fighters were employed on the same sort of contract as full-time staff and as such should be entitled to the same pension and sickness benefits.

The Law Lords said the tribunal had focused too much on the differences between full-time and part-time contracts and ignored the fact that their core duties were the same.

If you employ full-time and part-time staff, you should review their benefit entitlements in the light of this decision to protect yourself from discrimination claims.

The Value of Goodwill

A group of franchisees has successfully challenged HM Revenue & Customs' (HMRC) valuation of goodwill in a Special Commissioners' hearing. The principles outlined in this case will affect some goodwill valuations in other types of business and could benefit some people who transfer their sole trader or partnership business to a company.

HMRC has always maintained that franchisees can only create 'personal goodwill' which is related to the skills of the proprietor and cannot be sold. Any goodwill of the business itself belongs to the franchisor, according to HMRC.

When a group of pizza franchisees sold their restaurants back to the franchisor and received a payment in excess of the value of the premises and fixed assets, HMRC argued that this payment was not for goodwill, as would normally be the case on a business sale, but

compensation for early termination of the franchises. Unlike goodwill, such compensation could not qualify for capital gains tax rollover relief, which defers tax where the seller reinvests the proceeds into the acquisition of other business assets.

The Special Commissioner disagreed with HMRC, holding that the payment did represent consideration for goodwill. He considered that goodwill had to be looked at as a whole and includes whatever adds value to a business by reason of situation, name and reputation, connection, introduction to old customers and absence from competition.

The precise composition of goodwill will vary in different trades and in different businesses in the same trade. It can be sold separately from the premises, but will be enhanced if the premises and business are sold together.

Goodwill may affect the availability of various capital gains tax reliefs, including business

taper relief. On the incorporation of a business, goodwill can sometimes be transferred at a value with little or no capital gains tax to pay because of the combined effect of taper relief and the seller's annual capital gains tax exemption. The sale proceeds can be held on a director's account to be drawn tax-free later.

However, the goodwill cannot be 'sold' to the company at more than its market value and HMRC will challenge valuations that it considers are too high or where it claims any goodwill is based only on the personal skills of the proprietor.

The decision in the pizza franchisees' case, which HMRC will not appeal, may help counter HMRC objections to a valuation of goodwill. We can advise you on the value of goodwill in your business and on the wider implications of incorporating a business.