

Stop Press - UK Revenue wins a victory in campaign against undeclared foreign income

01 JANUARY 2006

Justine Markovitz

CHAIRPERSON | SWITZERLAND

CATEGORY:
ARTICLE

The UK Revenue have won an important victory in their campaign to recover tax on undeclared income held in non-UK accounts.

In a judgment released earlier this month, the Special Commissioner consented to the issue of a Notice under section 20(8A) of the UK Taxes Management Act 1970 to an unidentified financial institution in respect of its customers with UK addresses who hold credit cards associated with non-UK bank accounts. The financial institution in question was not entitled to attend the hearing, although it was allowed to make written submissions.

Under section 20(8A) a Special Commissioner can consent to the issue of a Notice requiring third parties to provide documents containing information relevant to a taxpayer's UK tax liability without naming that taxpayer if he is satisfied certain conditions are met.

The requested Notice sought the names, addresses and dates of birth of customers (other than quoted companies) having a UK address with a UK credit card, who on the application form (or subsequently) gave details of a non-UK bank account with which it is associated; the sort code and account number of the account; the annual interest earned on the account; and the transactions on the credit card for six different months.

The UK Revenue explained that if the Notice were granted they intended to match electronically the information received with tax returns. Where foreign interest had been declared on the individual's tax return, no further action would be taken and the individual would not even know about the Notice. If no foreign income had been declared, the UK Revenue would seek to ascertain if there was a good explanation for this (eg the individual is not resident in the UK, or is UK resident but not domiciled and had not remitted the income to the UK, or the income had incorrectly been reported as UK source income). Only if there was no valid explanation would the UK Revenue pursue their investigation into the undeclared interest.

The Special Commissioner emphasised that no allegation of impropriety was made against the financial institution itself. On the basis of the evidence which the UK Revenue produced, he noted that "far from being a fishing expedition it seems probable that some 80% of cases will raise questions, in some of which there will be an innocent explanation, but in others there is likely to be a default in complying with tax obligations. The Inspector's estimate is that 20% of cases will yield additional tax, with an estimated total of £347m." The Special Commissioner was satisfied the requirements of section 20(8A) TMA 1970 had been met.

The application for this Notice forms part of the UK Revenue's ongoing efforts to prevent tax evasion facilitated by the use of non-UK accounts linked to credit cards. This has been one of the main focuses of the Offshore Fraud Project Group, which was set up in 2003. In July 2005, as part of a pilot scheme to increase the tax yield, the UK Revenue sent a number of differently worded "enabling" letters to 500 UK resident and domiciled taxpayers who had reported no foreign income, aimed at encouraging them to reconsider their tax returns and notify the UK Revenue of any errors or omissions. All of these letters are reported to have implied that the taxpayer has a bank account or other funds outside the UK. It appears that the pilot has been successful and so it is likely that this approach will be used more extensively in future.

It is understood that the UK Revenue will seek to issue similar Notices on other financial institutions.

Although non-UK financial institutions are outside the jurisdiction of the UK Revenue's information gathering powers, where they have reasonable grounds to suspect tax evasion arising from the use of particular institutions or arrangements, we expect them to try to use their powers against their UK operations or connected parties.

The UK remittance rules which apply to UK resident but non-domiciled individuals are complex and we recommend that the non-UK banking arrangements of such individuals and any trusts in which they are interested, should be reviewed to ensure these are properly set up and operated and that funds are not inadvertently remitted to the UK in circumstances that could give rise to an unintended UK tax liability.

Authors

Justine Markovitz

CHAIRPERSON | GENEVA

Private client and tax

 +41 22 593 7711

 justine.markovitz@withersworldwide.com