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Rubik - HMRC are on the case

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Under the 'Rubik' UK/Swiss tax agreement (the 'Agreement'), UK residents with Swiss bank accounts and investment portfolios were given a choice earlier this year between suffering a one-off deduction from their Swiss assets to cover assumed past tax liabilities or authorising their Swiss bank to disclose their account details to H. M. Revenue & Customs ('HMRC'). Non-UK domiciled account holders were in principle allowed to opt out of this part of the Agreement.

It appears that HMRC have now received details of the account holders who opted for disclosure and are already writing to them to follow up. Anyone who is contacted by HMRC will need to act quickly, because recipients of such letters are being given until 1 November 2013 to complete and return one of the following three certificates.

- **Certificate A** – a declaration that they have no outstanding UK tax liabilities (either in relation to the Swiss assets or otherwise).
- **Certificate B** – a declaration that they will be disclosing their outstanding liabilities using the Liechtenstein Disclosure Facility ('LDF'); or
- **Certificate C** – a declaration that they will be disclosing their outstanding liabilities outside the LDF.

The letters contain a warning that if HMRC do not receive a reply by 1 November, they may start an investigation, which in certain circumstances could result in criminal proceedings. HMRC's recent guidance also makes it clear that HMRC will be checking the contents of the certificates received and any inaccuracies may also give rise to an investigation.

An account holder with outstanding liabilities needs to decide quickly whether he/she wants to disclose them via the LDF or outside it. Although there is no requirement to opt for the LDF, a taxpayer who qualifies to use it would normally be wise to do so in order to benefit from its favourable terms (e.g. the reduced limitation period, lower penalties and immunity from prosecution). Apart from the fact that a disclosure outside the LDF would not qualify for these terms, it seems clear from HMRC's guidance that such a disclosure would be no less onerous in terms of the process and the information required by HMRC, i.e. it would not simply be a case of writing to the account holder's own tax inspector and paying the amount due.

Anyone who decides to opt for the LDF will need to put the registration process in hand without delay, as HMRC say that they will check whether individuals who complete Certificate B have actually registered for the LDF. In many cases it will be necessary to establish a financial presence in Liechtenstein before the registration can be effected, so the decision whether or not to use the LDF needs to be made as quickly as possible.

HMRC's approach to the Rubik agreement provides yet more evidence that the UK is stepping up its drive against offshore avoidance and evasion. Apart from the ongoing initiatives in the area of international information exchange, HMRC recently announced a number of other measures in this area, including the creation of a new centre of excellence within HMRC to bring together and enhance their expertise in dealing with offshore evasion. In view of that, it would be dangerous to assume that the recent letters can be taken lightly.

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