Safe as houses…?

Anton Lane runs the rule over HMRC's Let Property Campaign

The expected number of taxpayers with undeclared income from let property is far greater than the number that have disclosed under the Let Property Campaign. HMRC needs to generate Revenue and has information permitting a targeted campaign which is likely to gain momentum during 2021.

The Let Property Campaign (LPC) was launched in September 2013 following the identification of a significant number of properties owned by different persons than those living in the property (those registered for Council Tax and/or on the electoral role). Due to the perceived quantum of defaulting taxpayers, the approach was to launch a campaign and encourage voluntary disclosures.

It was estimated that up to one-and-a-half million landlords had underpaid or failed to pay up to £500 million in tax between 2009 and 2010. HMRC identified that landlords registered for self-assessment was only around 500,000 meaning a significant number of landlords had simply not declared income. The statistics didn't take into account those holding second properties where relatives may have resided without paying rent, although the undeclared tax has still been significant.

Following a freedom of information request in 2020, it was identified that only 58,779 people have made voluntary disclosures to HMRC. The tax yield on this disclosure campaign has however, been significant: £163 million.

In 2018-19 there were 16,318 disclosures, although this fell to 7,362 in 2019-20. The desire to voluntarily disclose may have been affected several factors such as Brexit and the tax changes to those owning second properties. These changes may have financially impacted on property investors resulting in less desire to voluntarily disclose.

If HMRC statistics are correct there are still a considerable number of landlords that have yet to make disclosures.

The increased information powers available to HMRC permits the identification of landlords with undisclosed rental income and gains on disposals of property. HMRC has confirmed it has already issued 100,015 letters in connection with the LPC encouraging taxpayers to come forward. Nudge letters are sent in batches according to HMRC's commercial ability to handle the quantum of disclosures or enquiries made.

Where the landlord is registered for self-assessment and has completed tax returns within the appropriate time limits but has made a careless mistake the period for a disclosure may be restricted to the maximum of 6 years. A landlord that does not come forward and HMRC identify an irregularity, HMRC may be entitled to go back up to 20 years. HMRC state that "in serious cases HMRC may carry out a criminal investigation".

Unlike all other campaigns, the LPC has no end date. This may indicate that HMRC consider the quantum of taxpayers to be so significant that an open campaign is required. HMRC do state that "where income has not been declared for a period greater than three years HMRC are less willing to accept that the taxpayer's behaviour was careless".

The campaign applies to individual landlords who are letting residential property in the UK or abroad. It is not available to companies or trusts, nor for those letting commercial property.

The campaign has limited tax benefits and HMRC are simply intent on the taxpayer paying the correct amount of tax. However, the campaign does allow the presentation of facts that may allow tax exposure, interest and penalties to be mitigated. Furthermore, it can prevent the HMRC publishing the names of 'deliberate defaulters'.

The process of entering the LPC involves:

- Notification.
- Disclosure including quantification of tax, interest and penalties.
- Formal offer.
- Payment of liabilities.
- Co-operating with HMRC's request for information.

From the date HMRC acknowledge a landlord's inclusion in the campaign, a period of 90 days is given to make a full disclosure. A 'full disclosure' does not simply amount to a disclosure of irregularities related to let property – a condition of the Let Property Campaign is to include all of the income previously not disclosed to HMRC as well as the income received from letting property.

The period of 90 days may appear reasonable although often disclosures can involve a considerable amount of analysing transactions through bank statements and other records, which is time consuming and may place considerable pressure on practices not normally dealing with tax investigation work. HMRC state in their guidance:

"If you have your bank statements for the period of your disclosure they will probably help. If you do not have them HMRC recommends you contact your bank as soon as possible to get copies."

Making a disclosure can be complicated and HMRC state that an eligible person may wish to obtain independent professional advice. Information may not exist for the period of the disclosure. Tax investigation specialists are experienced with the methods used to identify and calculate tax irregularities where information is absent. HMRC advise that where records are not complete, an accurate estimate of income or expenses should be made. Caution should be exerted in applying an approach that could be challenged and HMRC are likely to want to review the methodology adopted.

A disclosure involving different types of occupancy, development, refurbishment or offshore ownership, complicated property investments and transactions may also require an interpretation of the prevailing legislation and or case law to determine the liabilities. Complications may also arise where the property owner has periods of non-residency or where an agent was appointed to manage the property during periods of non-residency.

HMRC are unlikely to accept disclosures that are materially incorrect or incomplete. HMRC are also unlikely to accept disclosures where HMRC has notified their intention to open an enquiry or compliance check before the intention to submit a disclosure under the campaign has been formed. Where an enquiry is open and income has not been disclosed which would be within the LPC an outline disclosure should be made to the office conducting the enquiry.

Using the LPC is unlikely to result in a criminal investigation unless:

- Activities giving rise to the omission involve crime:
  - VAT fraud
  - VAT bogus registration fraud
  - Organised tax credit fraud
  - Wider criminality
- The disclosure contains material inaccuracies.
- Details of technical positions taken are omitted with an intent to illustrate a tax advantaged position.
- Details of estimates or methodology of calculating liabilities is omitted with an intent to illustrate a tax advantaged position.
- The statement of assets is inadequate or inaccurate.
- There is a continuance of behaviour during or following the disclosure.

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