Death and taxes…

Anthony Greenwood explains the process of disclosing tax errors in relation to a deceased taxpayer

Where a taxpayer has died leaving unresolved errors in their tax affairs, different rules dictate the way in which they should be corrected, the periods that require correction, and the time limits under which HMRC must issue assessments. These rules are outlined below.

You may be familiar with the method by which historical errors in a taxpayer's affairs should be corrected and the time limits that will apply, but many people are unaware of the differences where the taxpayer concerned is deceased.

Standard rules

The standard time limits for HMRC raising assessments (and consequently the years that require disclosure) where tax returns have been filed incorrectly are four tax years (s.34 Taxes Management Act 'TMA' 1970) where an individual has taken reasonable care, six tax years where the individual has failed to take reasonable care, and 20 tax years where they have acted deliberately (s.36 TMA 1970).

Where the errors concern an offshore matter, these time limits are extended to 12 years (s.36A TMA 1970), although currently they are limited to tax year 2015/16 for reasonable care and 2013/14 for a failure to take reasonable care.

Where an individual has failed to notify HMRC of chargeability (essentially failed to file a tax return) the time limit is four tax years if the individual has a reasonable excuse for the failure, or 20 tax years if they do not, regardless of behaviour (although this can be limited to tax year 2009/10 onwards if the individual has not been negligent).

As an example, if someone has taken reasonable care, but made an error in their tax return for tax year 2019/20, relating to UK source income, HMRC must raise assessments by 5 April 2024 (tax year 2023/24).

The rules

Personal Representatives (PRs) dealing with a deceased taxpayer who had taken reasonable care during their lifetime, are still required to disclose any tax errors that occurred in the previous four tax years, from the tax year in which the death occurred. However, in cases involving careless or deliberate behaviour by the deceased, or someone acting on their behalf, HMRC are restricted to raising assessments going back six tax years. This applies to both inaccuracies and failures to notify, regardless of the behaviour that led to the loss of tax and whether or not the errors involve offshore matters.

A further distinction arises in relation to the time limit for raising those assessments. As noted above, the standard rule is the assessment must be raised within four, six or 20 tax years of the tax year concerned. However, where the individual is deceased, s.40(1) of TMA1970 gives HMRC four years from the end of the tax year in which the taxpayer died.

As such, tax periods that require disclosure do not fall away at midnight on 5 April each year for the deceased, as they do for the living. Instead, HMRC's ability to raise assessments will only

elapse (at midnight on the 5 April) four years after the end of the tax year in which the taxpayer died.

Example scenario
Bernie files tax returns but fails to take reasonable care and omits income he received from investments (UK or offshore) in tax year 2017/18. This is never corrected, and Bernie subsequently dies on 2 November 2023. HMRC discovers the inaccuracy on 6 April 2024 (tax year 2024/25).

Ordinarily HMRC would be out of time to raise assessments in relation to the inaccuracy, as more than six years have passed since the end of the tax year in which the inaccuracy arose. However, because Bernie died (in tax year 2023/24), HMRC has until 5 April 2028 to raise its assessments.

This would also be the case if Bernie had deliberately failed to declare the income.

Risks for personal representatives
Once PRs have completed their work, and settled any liabilities, the assets remaining in the estate are usually distributed in accordance with the deceased's Will or the intestacy rules. This often occurs within the four tax years in which HMRC must raise assessments.

Should HMRC discover undeclared tax liabilities, any assessments will be raised on PRs. If those PRs have already distributed the assets of the estate, they will be left without funds with which to pay those assessments. If they are unable to reclaim sufficient funds from beneficiaries to settle the liability, PRs can find themselves personally liable for the unpaid tax, plus any interest.

PRs that fail to properly consider the tax affairs of the deceased, including their historical filing position, may, therefore, find themselves liable for significant amounts of unpaid tax.

How we can help
Buzzacott's multi-disciplined team can assist with the administration of the estate, reviewing the tax affairs of the deceased to ensure no irregularities have arisen, and also deal with the disclosure of any irregularities that may become apparent.

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