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The born legacy

With the launch of Project Do It, the ATO's hunt for Australian money being kept offshore is reaching a new fever pitch. But there are safeguards in place: until December, the ATO is offering amnesty. If you come forward voluntarily, the rewards will be many. *FC Magazine* investigates.

A number of Australia's millionaires, particularly those from migrant families, have inherited a problem from their parents. Many European and Middle Eastern immigrants came to Australia in the 1940s, 1950s and 1960s to escape war and civil unrest. Many were reluctant to bring all their assets with them; others simply couldn't take their money on their journey.

So they left some or much of their wealth hidden carefully away, in accounts lodged back 'home' or trusted to the security and discretion of a Swiss bank account.

Things are changing in the world of tax

In the past, the lack of international co-operation and a different mind-set made sending or having money offshore a more tempting alternative. Tax evasion was more common because people did not understand the risks and many saw leaving assets overseas – or sending money 'back home' – as a safety net.

But now the world's tax authorities are working more closely than ever before to stamp out tax fraud.

Australia has information-sharing agreements with tax authorities in thirty-five countries, and treaties with forty-four countries. In 2012–13, such exchanges resulted in \$500 million of tax, penalties and interest.

A new convention tightens the net

Then, in October last year, Switzerland became the fifty-eighth country to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. This makes it easier for tax authorities to share information, stamp out tax fraud and identify and locate overseas bank accounts. The convention, to which Australia is a signatory, aids mutual assistance and the exchange of tax information on individuals.

For the next generation who have inherited this hidden wealth – the vast majority of whom are honest, law-abiding Australian citizens – such a situation presents a tricky problem. Particularly around the implications of declaring the wealth and paying years of back taxes to the Australian Taxation Office (ATO).

Until recently, Switzerland didn't share information about individual Australians hiding their income in Swiss accounts. But now, world tax authorities – including the Swiss – are co-operating more closely with Australia and other OECD and G20 nations to introduce greater tax transparency.

Nearly twelve months ago, in July 2013, Australia and Switzerland revised a thirty-year-old tax treaty that gives authorities greater powers to target rich tax evaders.

The convention promotes co-operation among signatories for the better operation of national tax laws by allowing the tax authorities of member countries to request administrative assistance from the other signatories. It also allows for automatic and spontaneous exchanges of taxpayer information between government departments like the ATO and the Swiss revenue authorities.

Once the convention is ratified and comes into force in Switzerland later this year, it will be possible for the ATO to enlist the Swiss revenue authority's help in identifying Swiss accounts 'hidden' by Australian citizens.

The reality is that it's only a matter of time before the ATO will find these accounts.

Given all this, the ATO is urging second- and third-generation wealthy clients to come forward and make 'voluntary disclosures' about offshore income or assets to avoid getting hit with bigger fines – or even jail – down the track.

The ATO's 'Project Do It': worth taking seriously

Tax advisers to many wealthy families have been monitoring the situation carefully. The ATO's willingness to act leniently at this stage in dealing with those who voluntarily admit they are holding offshore taxable revenue or assets is very encouraging.

Under the amnesty, which is open until 19 December 2014, the ATO will:

- only assess the taxpayer for tax in respect of assessments issued in the four years prior to the voluntary disclosure;
- charge shortfall interest on any tax assessed;
- cap penalties at 10 per cent of any tax assessed;
- allow taxpayers to enter into a settlement deed to obtain certainty; and
- not investigate the taxpayer's disclosure or refer it for criminal investigation (people engaged in wider criminal activity will not qualify).

Project Do It reflects a growing number of taxpayer-initiated voluntary disclosures. Over the past four years, the ATO has received almost 150 voluntary disclosures about money held offshore by highly wealthy people; the ATO defines them as controlling over \$30 million in net assets. As a result, almost \$200 million in tax has been paid.

What's at stake?

The ATO is well aware that the cumulative amount of outstanding tax could be in the billions of dollars. It has confirmed that it suspects there are still many wealthy people with offshore bank accounts, although it agrees it's impossible to put an exact amount on the total figure owing.

As an example of how the ATO treats such disclosures, assume the following: for whatever reason an individual or family has had \$15 million hidden in a Swiss bank account, earning a cumulative \$1 million in interest since the account began.

In the majority of cases in this area, hidden money has been more of a problem than a blessing. Frequently, it is the next generation that has to deal with it.

High-profile ATO hunts such as Project Wickenby show that the ATO has the resources to track down tax cheats who use complex networks to hide their money.

Project Wickenby also demonstrated the futility of having money sitting in an offshore account that is inaccessible.

On 27 March, the ATO announced the launch of the Offshore Voluntary Disclosure Initiative – otherwise known as 'Project Do It' – which creates what would appear to be the most generous taxpayer amnesty offered by the ATO.

The vast majority of these voluntary disclosures have resulted in reduced penalties and no further criminal investigation.

Under the ATO's current tax schedules, the tax payable would be roughly \$465,000 plus further significant penalties that could total up to 90 per cent of all tax liabilities discovered and assessed. Offenders could also be subjected to further investigations and possible further criminal prosecution.

But if the individual came forward to the ATO and disclosed the income, the penalty would be reduced from a potential 90 per cent to 10 per cent.

What do you do if you're in the ATO's sights?

The simple message behind all this is literally come clean or risk jail.

The ATO's resources and connections mean that it will have a good idea of what countries and structures are most often used for illegal asset hiding and revenue evasion. It is also very good at working with overseas partners to uncover which Australians are registered as beneficial owners of these assets, and what entities they might be using to mask the identity of their true assets values.

But the clear message from the ATO is that they treat honest disclosure quite differently from ongoing concealment. If taxpayers in this situation come forward voluntarily, they will be treated less harshly, and Project Do It gives an official affirmation to that view.

Bernard Marin is the founder of Marin Accountants

This article is intended to provide general information only and has been prepared without taking into account any particular individual's financial situation or needs.

We recommend you take financial advice specific to your situation before making any financial decision.

We would encourage anyone in this position to do a number of things.

Firstly, work with your lawyer or accountant to make a full inventory of overseas accounts and assets. Then, use your accountant to liaise with the ATO to finalise and lodge the disclosure statement.

Lastly, ensure your lawyer is kept in the loop so they are aware of any likely penalties that the ATO might levy and can advise you on how best to mitigate these through representation or appeals to the various legal authorities.