

Behavioural Factors Influencing Use of Offshore Disclosure Facilities

HM Revenue and Customs Research Report 387



Disclaimer

The views expressed in this report are those of the authors' and do not necessarily represent those of HM Revenue and Customs.

© Crown Copyright 2015

Copyright in the typographical arrangement and design rests with the Crown. This publication may be reported free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright with the title and source of the publication specified.

Published by HM Revenue and Customs, 2015

www.hmrc.gov.uk

Contents

1. Introduction	4
2. The Journey Toward Disclosure	5
3. Understanding the target audience	6
4. Triggers and motivators of disclosure	8
5. Learnings for the future	11
6. Conclusions	12

1. Introduction

As part of its ongoing work to promote tax compliance, HMRC has developed a cohesive strategy to tackle offshore tax evasion. Recognising that there are many ways to promote positive behaviour change, aside from using sanctions against non-compliance, HMRC is focusing on designing out opportunities for evasion and promoting voluntary disclosure via offshore disclosure facilities.

To promote wider take up of offshore disclosure facilities, HMRC are eager to fully understand the factors that influence voluntary disclosure. They therefore commissioned this research to understand more about the motivators and influencing factors that affect offshore evasion, non-compliance and the decision to disclose. Specifically, this research aimed to:

- Understand the **journey towards disclosure** to identify key steps to disclosure and any behavioural 'hurdles' that may impede positive behaviour change;
- Develop a fuller **understanding of the target audience**, including how clients differ in terms of their behaviour, motivators and reasons for non-compliance;
- Identify the **triggers and motivators of disclosure** for different types of client and the levers that agents use to persuade clients to act and not delay disclosure;
- Draw out **learnings for the future** to promote voluntary disclosure and work with agents and intermediaries to reach hidden groups.

1.1 Approach and Sample

Previous research has shown that individuals who have disclosed via a facility like the LDF can be very reluctant to take part in research to discuss their experiences. Consequently, this research was conducted using face to face interviews with agents who handled offshore disclosure cases via the Liechtenstein Disclosure Facility (LDF). They reported on their overall experience of dealing with clients using the LDF, but did not discuss individual cases.

The research comprised of 40 interviews, which took place between August and September 2014, with the main sampling criteria being the volume of LDF cases handled by the agent. This was weighted towards agents handling a high volume cases (100+) based on initial analysis of the agent population, to ensure the research tapped into a wide set of experiences of dealing with a variety of clients and reasons for having offshore assets. There were a small number of agents handling a medium number of cases to sample from which explains the weighting towards agents who had dealt with less than 50 cases. As secondary criteria, the sample included both agents who dealt exclusively with LDF cases and with agents who provided a varying range of tax advice. This was established via screening as part of the interview and recruitment process. These criteria were included to explore any differences in the way these agents first made contact with LDF clients or promoted the LDF.

Tax agents participating in the research	Range of tax advice provided			
	LDF Exclusive	LDF Main	Wide range including LDF	Total
Volume of cases				
Low (5-49 cases)	1	4	10	15
Medium (50-100 cases)	4	0	1	5
High (100+ cases)	10	8	2	20
Total	15	12	13	40

2. The journey toward disclosure

The **agents' view was that** clients they dealt with did not tend to identify themselves as 'tax evaders' because they did not perceive themselves to be deliberately breaking the rules with regards to tax - even in cases where they had kept non-compliant funds a secret for many years. The tax agents thought this may be for a variety of reasons: they were not involved in the initial non-compliant behaviour; had acted on bad advice; **or been 'caught out' by complex** rules or changes to tax law. This presents a challenge for HMRC. If some members of the target audience **do not identify as 'evaders',** they may not engage with **messages about 'offshore evasion', assuming these are for 'real' tax evaders who are actively** (and currently) evading tax. There were a number of key decision points that must be in place for clients to act on advice to voluntarily disclose:

1. Clients must **identify themselves as needing to disclose.** This means they must a) be aware that they have non-compliant offshore **funds and b) understand that 'doing nothing'** (i.e. burying their head in the sand, as clients were often described as doing) was **'breaking the rules' and** hence evasion messages were relevant to them;
2. To act now, they must believe that there is a real **credible risk** attached to being non-compliant, that they will be caught and that the consequences will be severe;
3. Finally, they must understand the **benefits of using disclosure facilities,** both rational (e.g. reduced penalties) and emotional (e.g. reducing worry, being able to sleep at night) and believe that the option to disclose under the terms available through the LDF may not be available for much longer.

To motivate clients to act now, clients must believe there is a real and urgent risk of getting caught. The agents interviewed believed that increasing awareness of the exchange of information between HMRC and offshore jurisdictions would support the perception that the world was changing, there was nowhere left to hide, and that maintaining non-compliant offshore funds was no longer tenable. However, agents said that their clients varied considerably in terms of their overall attitude to risk – whilst some were easily convinced of the risk of being caught, others were incredulous about **HMRC's capacity to** interrogate new information or did not believe that they (as a small player in terms of tax evasion) would be targeted.

On the whole, however, agents said that once a new client had enquired about disclosure, it was easy to convince them to disclose via the LDF as the benefits of disclosing through the facility were compelling - the fixed penalties, the limited assessment period and composite rate were considered key elements as the financial cost was often lower than clients expected. However, this was only the case when clients believed that no comparable facility would be available after the LDF closed.

3. Understanding the target audience

This research sought to understand how LDF clients differed in terms of their behaviours and motivations to disclose, as well as to explore what agents thought were the beliefs and motivations of others who were yet to disclose. This research identified four types of client, who differed largely in terms of their involvement in the non-compliant activity **and the degree to which they saw themselves as 'evaders'**. These are discussed in turn below:

Inheritors – These clients were not involved in the original non-compliant activity and many were largely or wholly unaware that the funds existed until they inherited. However, some had failed to disclose funds they knew to be non-compliant for many years, largely because they did not properly understand their legal position or were afraid of the consequences of coming forward. In some cases, clients were under pressure from other family members who did not want to disclose their inheritance. These clients reported to agents that they were increasingly upset by the thought of getting caught but **'felt trapped' because they did not know how to regularise their affairs**.

Clients who had newly inherited funds were motivated to act quickly. In some cases, they were unaware that the funds existed and therefore wanted to be able to access the money as soon as possible. These clients may also have prestigious careers themselves and were therefore worried about reputational damage should they be subject to an investigation or otherwise exposed as having irregular financial arrangements. Learning about the LDF when first hearing about a new inheritance gave these clients a non-threatening channel to regularise; consequently they did not feel compelled to keep funds secret as other legacy evaders had done.

Non-domiciled or clients with international business affairs – This group were easily caught out by complex rules or poor advice from overseas agents who did not understand UK tax law sufficiently well. In some cases, non-domiciled clients were simply continuing behaviours that were no longer compliant under the 2008 rule changes. However, agents thought that some individuals in the client group **'turned a blind eye' to arrangements they suspected to be non-compliant** because it was plausible that any non-compliance would be perceived as unintentional, due to the complexity of tax law.

Legacy evaders – Clients in this group had accumulated offshore funds decades ago (in the 60s, 70s and 80s) at a time when they believed it was common practice and acceptable. In recent years, these clients had witnessed a change in public opinion, alongside more stringent penalties, and were therefore nervous about discussing these funds, despite often wanting to regularise their affairs. Consequently, **these client did not see themselves as true 'tax evaders', despite being involved in the original evasion activity**.

Strategic evaders – In a small number of cases, agents dealt with clients who had been actively (and recently) using offshore accounts and structures to evade tax. Unlike other groups, these clients had a sophisticated understanding of the tax system. In these instances, clients came forward because they had weighed up the risk and benefits of continuing their evasion activity against the benefits of disclosing via the LDF. Their decision to disclose was wholly rational - based on their analysis of whether the LDF was financially the best option for them to regularise their affairs.

Agents said that the majority of cases they had dealt with were either on behalf of Legacy Evaders or Inheritors; amongst mid and high volume agents, estimates ranged between around two thirds and three quarters of cases were on behalf of these client types, whilst some low volume agents may have only dealt with these two groups. The remainder were largely non-domiciled or clients with international

business affairs. Few agents had experience of dealing with strategic evaders; those who had said that this made up a very small proportion of the cases they had dealt with (less than 10%).

Consequently, agents said that in most cases, the clients who approached them about disclosure, did not consider themselves to be true tax evaders, because they had not, or were no longer, intentionally non-compliant with tax law – indeed many felt they were victims of circumstance, unable to rectify a situation they found stressful.

4. Triggers and motivators of disclosure

A variety of triggers - including contact from their agent, offshore financial advisor or from HMRC; a life event; or press coverage of disclosure - prompted clients to review their tax affairs and consider opportunities to regularise. In some cases (but not all), these triggers were sufficient for clients to decide to disclose via the LDF. However, clients who were less concerned about the risk of getting caught required further motivations to act. Agents needed to persuade these individuals to act now, both by presenting the LDF as a limited time offer and/or heightening risk perceptions around getting caught.

Triggers could be led by the **individual**, due to a change of circumstances, or driven by contact from the **agent** or **HMRC**. These different types of trigger are discussed in turn below.

Individual-led triggers - In some cases, clients were prompted to review their affairs in response to a life event – such as an illness or death in the family, or needing funds to pay for retirement or support children financially (e.g. help buying a house). This was particularly common amongst legacy evaders and inheritors who were often in later life themselves and increasingly concerned about leaving a problem for their children if they were to die without regularising their affairs. Therefore disclosing via the LDF allowed them to both **access the money and 'do the right thing' for their children**, by resolving tax liabilities themselves.

Clients also became aware of non-compliant funds after requesting a financial **review or 'health check'** from their financial adviser. Clients with complex international arrangements and inheritors sometimes became aware of irregularities this way and were then referred to a disclosure specialist in order to regularise.

Strategic evaders and clients with international business affairs were sometimes prompted to take action when the value of their funds increased, due to a large bonus for example. This raised risk perceptions as these clients felt more conspicuous and believed the consequences of getting caught would be more serious due to the value of funds.

Clients affected by loss and publication of client data were amongst the first to come forward to disclose via the LDF. The threat of exposure heightened risk perceptions; these individuals no longer felt able to **'hide their head in the sand'**.

HMRC-led triggers - Receiving direct mail from HMRC was an effective trigger across all client groups as this, more than any other trigger, heightened risk perceptions. Receiving a nudge letter demonstrated that HMRC had their personal details and consequently these individuals felt exposed. In some instances, individuals were forced to come forward because HMRC was conducting an enquiry into their business, a business associate or family member, which would ultimately expose their non-compliant funds. Finally, learning about changes to eligibility criteria for disclosure facilities was also effective in prompting clients to think about disclosure sooner rather than later as this indicated that favourable terms cannot be guaranteed and may not be available in the future.

Agent-led triggers – Low- and mid-volume agents marketed LDF services to existing clients, or databases of potential clients, through newsletters. These were not targeted in any way; agents sent out blanket emails highlighting the benefits of disclosing via the LDF. However, agents said that the tone of the correspondence was deliberately non-accusatory, presenting the LDF as a non-threatening route to regularise their affairs, for anyone who believed they needed to do so. On the whole, high volume agents primarily dealt with clients who were referred to them, and therefore marketed to offshore banks, independent Financial Advisors and other tax agents rather than directly to potential clients.

These triggers prompted individuals to seek advice, in some cases clients had already decided to disclose, and in other cases they required further persuasion. This depended on their individual circumstances and how effectively the triggers raised risk perceptions. HMRC-led triggers, for example, were particularly powerful in raising risk perceptions. Agents said that clients who had received direct contact from HMRC tended to be highly motivated to disclose because they believed they would get caught, although they questioned whether these letters were as effective for strategic evaders **who were sceptical of HMRC's** capacity to prosecute. Otherwise, **the impact of these triggers was dependent on the individuals' personal** circumstances and attitudes towards continuing the evasion activity. For legacy evaders and inheritors who needed to use the money and felt increasingly worried about having non-compliant funds, simply learning about the LDF through an agent newsletter or in the media, may be sufficient to prompt disclosure. However, individuals who felt less urgency to disclose required further persuasion about the benefits of LDF.

4.1 Motivating clients to act now by disclosing via the LDF

Disclosing via the LDF was the obvious choice for most clients as agents were able to show that, due to fixed penalties, the limited assessment period and where relevant the composite rate, the final cost of disclosure was often lower than clients had feared. However, agents did not focus solely on the rational benefits of disclosing via the LDF; for many clients the emotional benefits of disclosure (e.g. relieving stress and worry and protecting other family members from issues in the future) was equally as important.

Fear of prosecution was not as strong a lever to disclose as one might expect, largely because few clients **believed they were at risk from prosecution, either because they didn't think they were personally** responsible or did not believe that HMRC had the resources to prosecute. However, agents said that many clients were extremely worried about being the subject of an investigation, both because they thought it would be highly stressful and would damage their reputation. Consequently agents often stressed the risk of a tax investigation over the risk of prosecution.

Given how nervous clients felt about the consequences of coming forward, having a degree of certainty about the outcomes was a key motivating factor. This was both in terms of the likely financial penalties as well as understanding the likely process e.g. how long disclosure would take and the level of interaction with HMRC. Agents therefore valued having a single point of contact within HMRC and guidance from the help centre as this allowed them to feel more confident making assurances about outcomes.

Only strategic evaders solely based their decision on a rational analysis of the terms of the LDF, weighed against the risk of getting caught. There were two key barriers for this group to take the step to disclose:

- 1) They believed that HMRC lacked the resources to prosecute, even with new evidence through international exchange of information, and
- 2) They expected that other facilities would replace the LDF because voluntary disclosure was the most cost-effective means for HMRC to recover evaded tax funds.

Therefore, for strategic evaders, the decision to disclose was all about timing – they needed to be convinced that this was the right time to disclose, both that they were likely to be caught and penalised and that there would not be a more favourable terms to disclose voluntarily in the future.

Agents were uniquely positioned to 'sell' the LDF because they had close interaction and knowledge of **clients'** circumstances. They were therefore able to present the right balance of rational argument and emotional benefit of disclosure to hasten the decision to disclose.

5. Learnings for the future

In order to effectively promote voluntary disclosure in the future, it is important to recognise that some people may have accumulated non-compliant funds without intending to evade tax. To avoid alienating these groups, messages about disclosure could be reframed using language which assumes they are willing to comply with tax law and that they need help to get their affairs in order. This includes using the **term 'non-compliant' rather than evasion and encouraging people** to be vigilant, to carefully review their affairs and recognise that complex rules and changes to tax law could mean that they may need to regularise.

Signposting individuals to a disclosure specialist may help in facilitating disclosure amongst individuals who want to regularise their affairs but are afraid of the consequences of coming forward. Focussing solely on the punitive consequences of failing to disclose may in fact have the opposite effect, making these individuals more scared to come forward. Whilst agents recognised that HMRC was not in a position to reassure evaders about the outcomes of disclosure, they thought that more could be done to signpost individuals to specialists who could provide more information about disclosures and the likely outcomes. Raising risk perceptions was considered critical, although it may be more effective to highlight the threat of an HMRC investigation than the risk of prosecution as this may resonate with individuals who do not **identify as 'evaders'** and therefore do not believe that they would be treated as criminals. For strategic evaders, publicising prosecutions, and details of how HMRC will use evidence garnered through international exchange of information agreements, was considered necessary to counter the perception that HMRC does not have the resources to prosecute.

Finally, agents said that more could be done to raise awareness amongst UK agents and offshore advisers of the implications of international exchange of information agreements and disclosure facilities like LDF. High volume agents who specialised in voluntary disclosure focussed much of their marketing activity on educating UK and overseas advisers about disclosure in order to drive referrals. They believed that HMRC had a responsibility to do more to educate intermediaries (such as Offshore Independent Financial Advisers and small generalist UK accountants) in order to ensure that people who needed to disclose were given appropriate advice about their options.

6. Conclusions

For the most part, tax agents perceived that clients who used the LDF did not see themselves as having done anything wrong and **sensitivity is required to ensure these individuals self-identify as non-compliant.**

HMRC's efforts need to be targeted not at 'disclosure' – but at **encouraging people to 'review their affairs'** – reminding them that they are responsible for ensuring compliance, and urging them to seek specialist advice (e.g. via an agent). Agents can then 'close' the journey for HMRC.

Motivation to act depends both on accepting the **likelihood** of getting caught and the perceived severity of the **consequences.**

Intentional evaders may **continue to procrastinate** where they believe that **other facilities will come along** and / or **HMRC do not have the resources to target evaders** – even after international information exchange.

It is difficult to move audiences through the behavioural journey steps purely through HMRC / wider media coverage, or even more direct interventions (e.g., bank letters). **Agents play a critical role in helping confirm non-compliance, and make the risk real.**