



Tax update

Claremont Hotel

19 December 2019





Agenda

Offshore Non-Compliance

Justine Howard

Reasonable Excuse

Ed Renton

**Global Anti-Base Erosion Proposal
("GloBE")**

Robert Rotherham

IOM Mandatory Disclosure Rules

David Parsons

**Are you prepared for Economic
Substance?**

David Parsons

Q&A



Offshore Non-Compliance

Justine Howard

19 December 2019

Offshore Non-Compliance

- Offshore non-compliance refers to tax non-compliance involving offshore matters or offshore transfers, whether or not it also involves an onshore matter
- The taxes in which non-compliance can arise are IT, CGT and IHT
- Tax non-compliance includes:
 - Inaccuracy in any tax/IHT return
 - Failure to notify chargeability to IT, CGT
 - Failure to deliver a tax return or IHT account
- Offshore matter = non-UK source, tax relating to assets held outside UK, activities carried on outside the UK
- Offshore transfer = income or proceeds on disposal of an asset are received outside of the UK or transferred outside of the UK prior to filing a tax return



“Since 2010, HMRC has raised over £2.9 billion by tackling offshore tax non-compliance, enough to build 6 new hospitals”

No safe havens 2019 -
HMRC's strategy for offshore tax compliance



Extended Time limits

- Discovery assessments – where taxpayer does not notify chargeability at all and where HMRC consider a return was incorrect
- Under RTC HMRC have until April 2021 to assess anything that could have previously been assessed on 6 April 2017
- Post RTC HMRC now have 12 years for reasonable care and carelessness (instead of 4 and 6 years, respectively) and 20 years for deliberate behaviour
- IHT – 20 years for failure to notify or unlimited where deliberate. Tax recovered by Notice of Determination. If filed an account, look at 12 and 20 years to claim further tax
- Deadlines also differ for deceased taxpayers



Example 1

Rebecca submitted incorrect UK SA tax returns for 2009/10 through to 2017/18, inclusive in relation to offshore income.

Rebecca is only required to make a correction for tax years in relation to which HMRC is able to raise a discovery assessment on 6 April 2017.

Under RTC legislation, 2009/10 through to 2010/11 is outside the scope of the RTC as normal 6 year time limit for carelessness has expired as at 6 April 2017.

Rebecca should therefore make a voluntary disclosure in relation to any outstanding tax liability for the tax years 2011/12 through to 2016/17, inclusive.

If she doesn't.....



Example 1 (cont'd)

| Tax Year | Normal time limit | Extended time limit |
|----------|--|---|
| 2011/12 | 5 April 2018 (6 years after 5 April 2012) | In scope of RTC and time extended to 5 April 2021 |
| 2012/13 | 5 April 2019 (6 years after 5 April 2013) | In scope of RTC and time extended to 5 April 2021 |
| 2013/14 | 5 April 2020 (6 years after 5 April 2014) | In scope of RTC and time extended to 5 April 2021 |
| 2014/15 | 5 April 2021 (6 years after 5 April 2015) | In scope of RTC but no need to extend |
| 2015/16 | 5 April 2022 (6 years after 5 April 2016) | In scope of RTC but no need to extend |

- The tax year 2016/17 will be covered by the extended time limit of 12 years
- Rebecca can submit a revised UK SA tax return for 2017/18 by 31 January 2020. If she doesn't HMRC will have until 5 April 2030 to raise a discovery assessment and apply the existing penalty regime

FTC vs Existing Penalty Regime

Failure to Correct (FTC) Penalty Regime

- FTC relates to tax years 2015/16 and earlier
- FTC maximum penalty is 200% but can be reduced dependent on whether the disclosure is voluntary (100%) or non-voluntary (150%)
- Only way to get out of FTC is reasonable excuse

Existing Penalty Regime (Post RTC)

- Tax years 2016/17 and later tax years are charged under existing penalty regime
- Existing regime for IT/CGT takes into account behaviours, ie careless, deliberate and deliberate and concealed, and the territory in which non-compliance arose
- Existing regime for IHT is different again
- Isle of Man is in Territory 1 – maximum rate 100%
- Higher penalties are due where the territory is less transparent
- Penalties reduced by “quality of disclosure”
- Generally it is taxpayer in default who suffers the penalty for an erroneous return but third parties such as offshore trust and company providers can be caught
- NB Civil penalties for enablers of offshore tax evasion or non-compliance
- No penalties for deceased taxpayers



Example 2

Background

- Nick was UK resident and deemed domiciled in the UK when he created the Santa Settlement, an IOM discretionary settlement, on 25 December 2002 with an initial trust fund of £1,000
- Nick is also a beneficiary of the settlement
- Nick made further additional transfers of cash and investments into the settlement in 2003, 2010 and 2015 totaling £500,000
- Trust distributions have been made to Nick and his wife in 2004 and 2009
- Unfortunately, Nick died on 6 June 2016 and IHT was paid by his Executors to HMRC in relation to his estate on death which includes the value of the Santa Settlement as he was a beneficiary of the settlement

Tax consequences

- As this is a failure to notify case and assuming no deliberate behaviour, HMRC have 20 years to assess any outstanding IHT arising
- Therefore, IHT due on TYA on 25 December 2012 and all additions to settlement (subject to NRB). IHT on additions will be trustees' responsibility now Nick is deceased
- IHT may also be due in relation to the trust distributions
- FTC Penalties of up to 200% will apply and interest is payable from due dates of payment

Example 3

Background

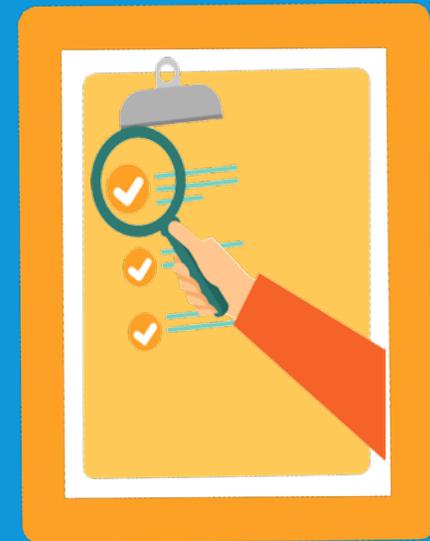
- Jingle was non-resident and non-domiciled in the UK when he created the Bells Settlement, an IOM discretionary settlement, on 25 November 1997 with an initial trust fund of £500,000 (IOM source income)
- Jingle has a UK domicile of origin and was born in the UK
- Jingle resumed UK residence in June 2017
- Trust distribution made in February 2018

Tax consequences

- As this is a failure to notify case and assuming no deliberate behaviour, HMRC have 20 years to assess any outstanding IHT arising
- Therefore, IHT due on TYA on 25 November 2017 (2007 TYA is not relevant as settlement still excluded)
- IHT and IT/CGT may also be due in relation to the trust distribution
- Penalties will apply to failure to notify HMRC of TYA liability in 2017 and the trust distribution in 2018
- Interest is payable from due dates of payment.

In 2018, HMRC received CRS records relating to 5.67 million accounts up from 1.63 million records in 2017

No safe havens 2019 -
HMRC's strategy for offshore tax compliance



Action Points

- Identify and disclose as soon as error discovered as penalties can be mitigated for FTC purposes to 100% or 150% and under existing penalty regime to 0% in some cases
- Be as co-operative as possible but be aware that there is a fine line between doing everything you can to help HMRC correct the error and giving them information they are not entitled to
- Consider whether there is a reasonable excuse – obtain specialist advice
- Diarise HMRC deadline dates but also dates when you need to start collating relevant information etc
- Carefully consider tax consequences of every transaction particularly where they involve offshore trust and company structures
- Keep comprehensive and well organised records and up-to-date final accounts - these will be invaluable to successfully challenge incorrect discovery assessments and/or make disclosures in a timely and efficient manner
- If a delay expected, notify HMRC and offer provisional figures where possible
- Beware of HMRC “nudge” letters and responding without undertaking a thorough review of the position



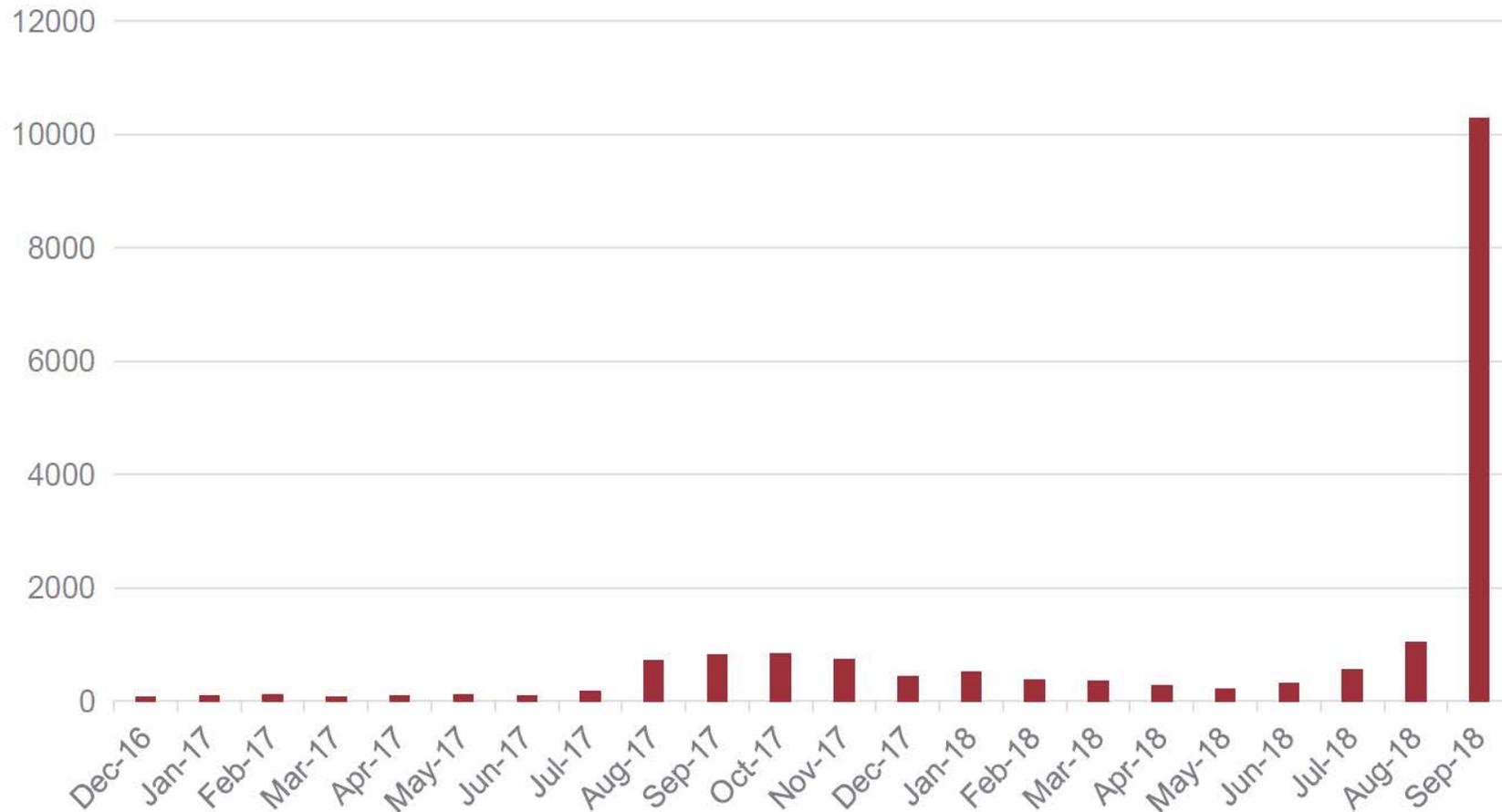
Reasonable Excuse

Ed Renton

19 December 2019

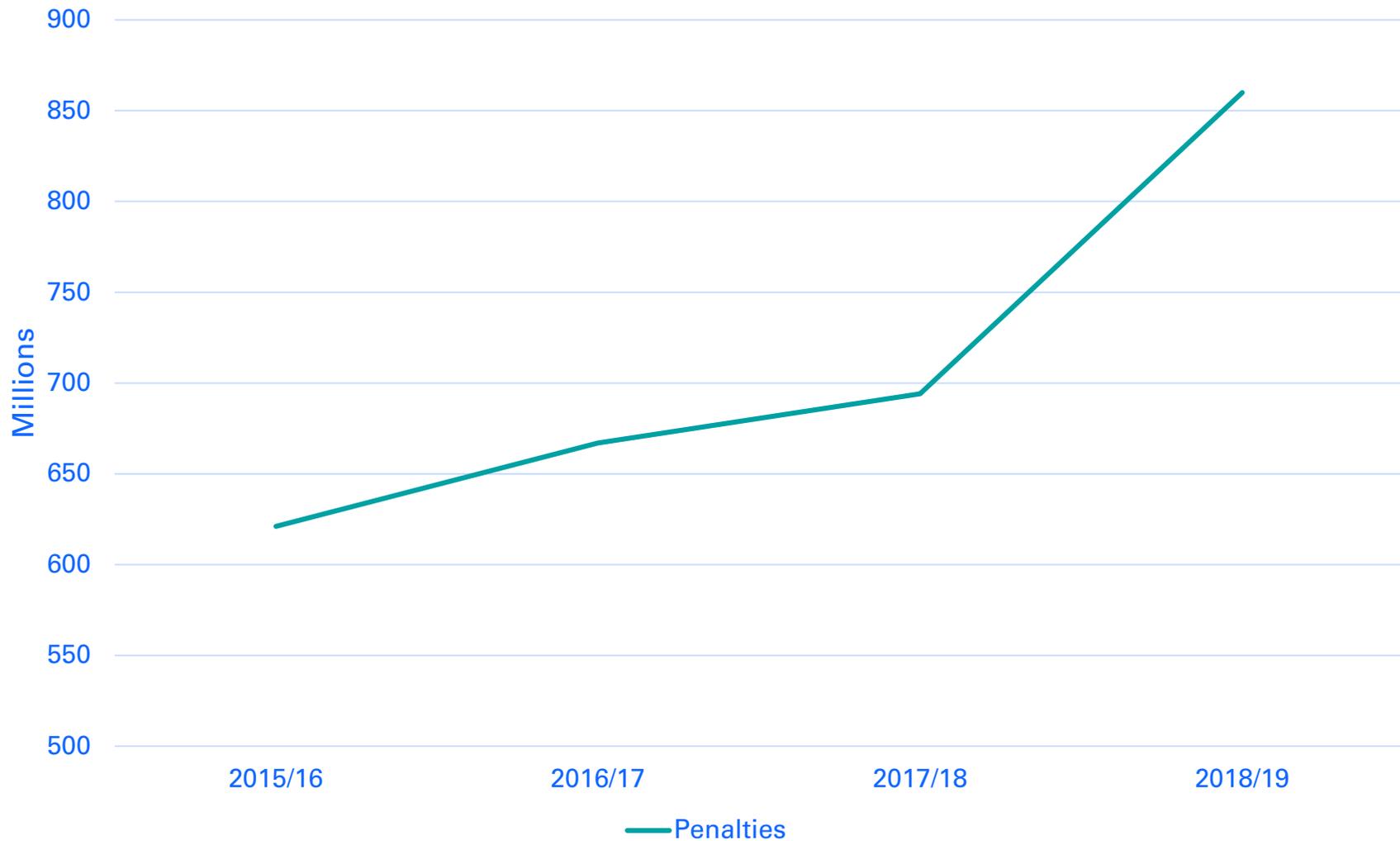
Disclosures to HMRC

Notifications to the Worldwide Disclosure Facility

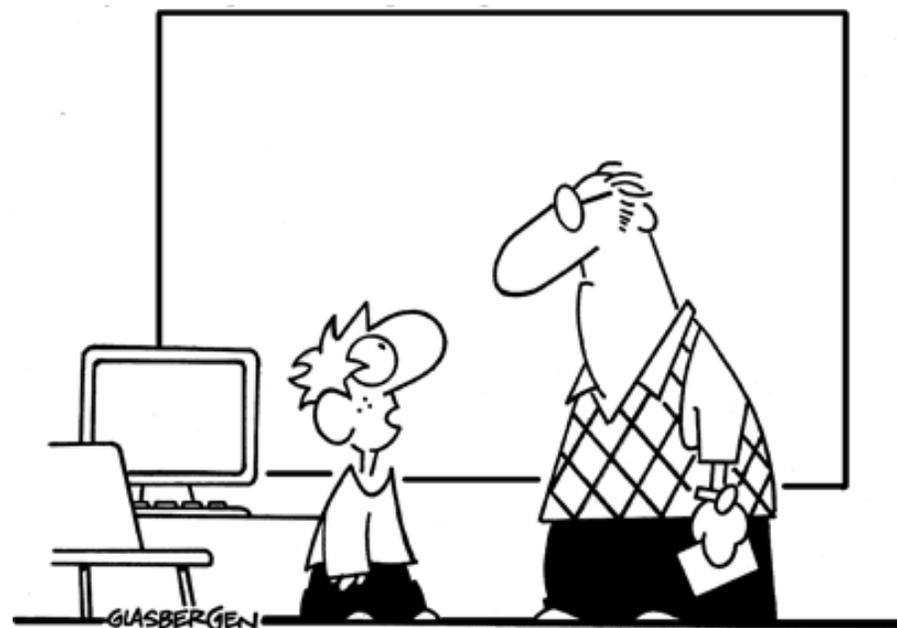


Source: HMRC presentation to London Tax Society – November 2019

Penalties charged by HMRC



Reasonable Excuse



"I don't have my homework. My dog deleted it."



Not so reasonable excuses 2019

- My mother-in-law is a witch and put a curse on me
- I'm too short to reach the post box
- I was just too busy – my first maid left, my second maid stole from me, and my third maid was very slow to learn
- Our junior member of staff registered our client in Self Assessment by mistake because they were not wearing their glasses
- My boiler had broken and my fingers were too cold to type

Reasonable Excuse – General

Perrin v HMRC

- *First, establish what facts the taxpayer asserts give rise to a reasonable excuse*
- *Second, decide which of those facts are proven.*
- *Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased.*
- *Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased).*
- Reliance on a third party to do something can be a reasonable excuse but that third party must be actively managed.
- Ignorance of the law can amount to a reasonable excuse.
- Must take action as soon as the Reasonable Excuse has ended.

Reasonable Care – General

- Did the person seek advice?
- Did they give the advisor all of the relevant facts?
- Did they check the advice to the best of their ability?
- Did they follow the advice given?
- If still unsure, did they include a white space comment on their return explaining what had happened?



Reasonable Excuse – RTC & Avoidance

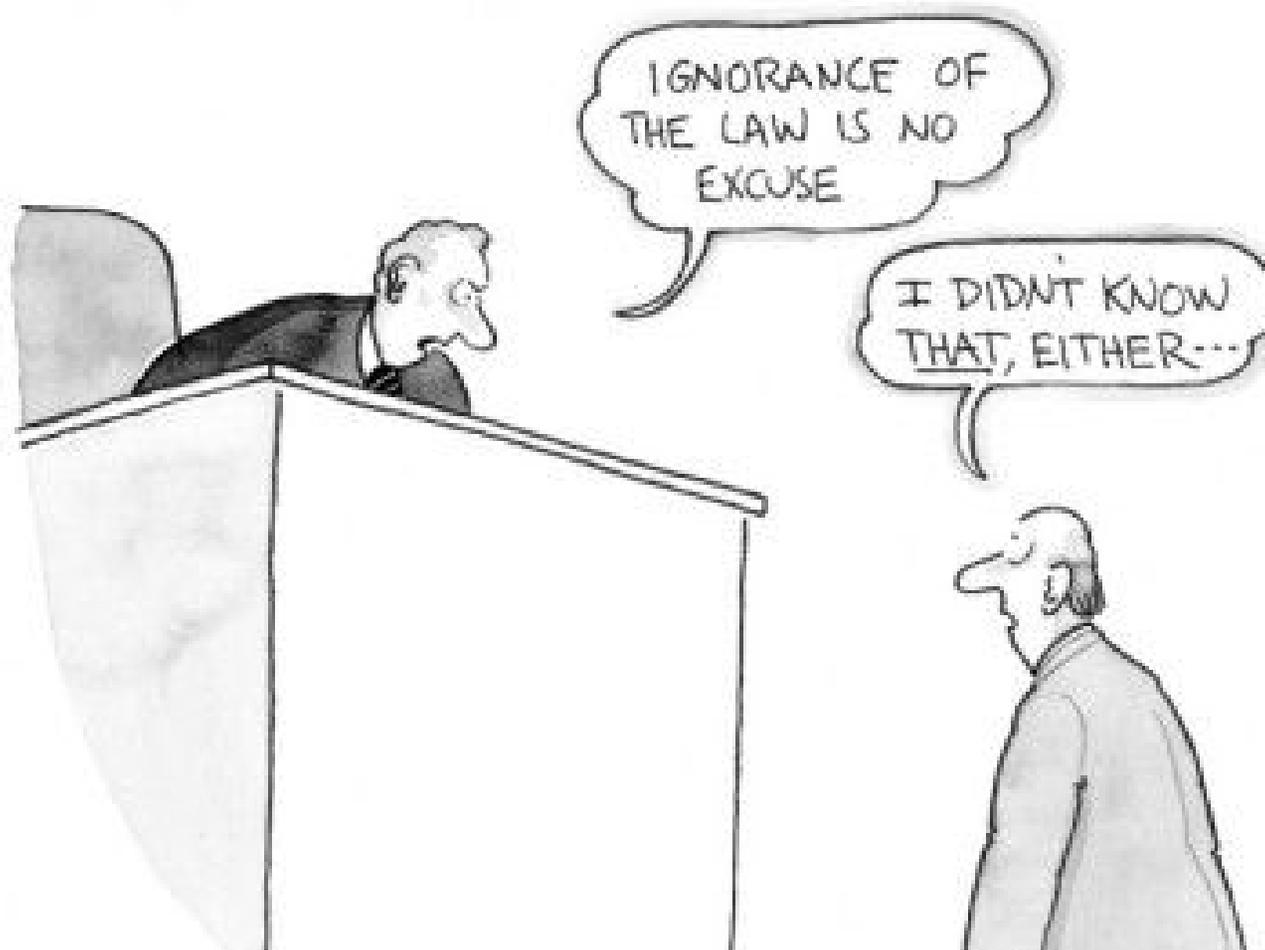
Avoidance arrangement – “it would be reasonable to conclude that the obtaining of a tax advantage was one of the main purposes of the arrangement”.

Disqualified advice

1. Interested person
2. Person connected to an interested person
3. Person did not have the appropriate expertise
4. The advice failed to take into account all of the person’s circumstances
5. The advice was addressed to, or was given to, a person other than the person

However advice will not be disqualified if the person took reasonable steps to check that the advice falls within 1 - 4 above, and reasonably believes that it does not.

Reasonable Excuse





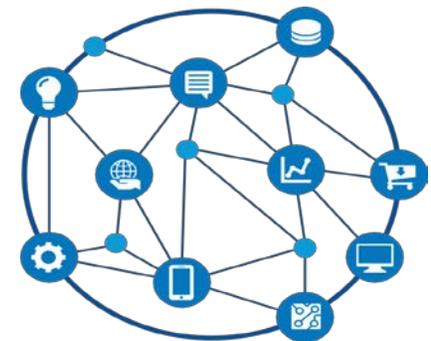
Global Anti-Base Erosion Proposal ("GLOBE")

Robert Rotherham

19 December 2019

OECD – Tax challenges of digitalisation

- BEPS Action Area 1 “Addressing the tax challenges of the digital economy”
 - Most difficult action area?
 - Now been split into two “pillars”
- Pillar I: taxing “digital” MNEs
 - Allocation of taxing rights for digital businesses
 - General move to charge corporate tax based on where consumers are
 - Acceptance that PEs can exist with limited physical presence – concept of “significant economic presence” e.g. user volume, marketing activity”)
 - Proliferation of unilateral measures
- Pillar II: Global Anti-Base Erosion (“GloBE”) proposal
 - Other risks associated with low or no tax jurisdictions
 - Goes beyond digital businesses
 - Minimum rate of tax



US Tax Reform

- Pillar II began life in January 2019: proposals remain lacking in detail
- Consultation launched in November 2019 (now closed)
- Inspired by international aspects of US 2017 tax reform (OECD behind the pace for once!)
- Global Intangible Low-Taxed Income (“GILTI”)
 - Enhancement of CFC-style legislation, GILTI is a new class of attributed profit, taxed at a reduced US rate (10.5%-13.125%)
 - Previously only taxed when repatriated
- Base Erosion and Anti-Abuse Tax (“BEAT”)
 - Additional “top-up” tax charge where deductible payments (mainly interest and royalties) are made to foreign related parties
 - Applies only to MNEs with turnover >\$500m
- Together operate so as to disincentivize US MNEs from holding valuable IP overseas



Pillar II

- Range of options under consideration (partly inspired by US changes)
 - Lack of detail
1. Income inclusion rule: taxes income of foreign sub/ branch if subject to an effective below the minimum rate
 2. Undertaxed payments rule: denial of deduction (or possible imposition of WHT) if payment subject to tax below the minimum rate
 3. Switch-over rule: change to treaties allowing home jurisdiction to switch off an exemption for foreign PE profits if they are subject to tax at below the minimum rate (and instead provide DTR)
 4. Subject to tax rule: similar to undertaxed payments rule but focused on WHT
- All rules would need to be implemented by way of domestic law changes and updates to treaties: overall package would add up to a significant change to the international tax framework



Pillar II (cont'd)

- Income inclusion rule blending options:
 - Worldwide
 - MNEs aggregate total foreign income and compare to total foreign tax
 - if effective tax rate is <minimum rate, a top up tax charge is applied
 - Jurisdictional
 - Apportion foreign income between different jurisdictions (entities and branches) and compare to tax in that jurisdiction
 - Again, if ER is <minimum rate, top up tax
- Entity level
 - Determine ER for each group entity and top up, where appropriate, per entity
 - More granular = more complex (effect of losses, other timing differences, group relief etc)
 - Less granular = less effectiveness?



Pillar II (cont'd)

- Carve outs
 - Controlled companies with related party transactions < *de minimis*
 - Thresholds based on the turnover or other group size indicators
 - Specific sectors/ industries (shipping/ extractive e.g. tonnage tax/ ring-fenced regimes)
- How about carve outs for those jurisdictions with:
 - CFC regimes compliant with BEPS AA3?
 - Other income inclusion rules (e.g. GILTI)?
- What is the minimum rate of tax?!
 - We don't know!!
 - Examples in November consultation document use 15%
 - “Between Hungarian and Irish tax rate”
 - Proportion of rate applying in parent co jurisdiction?
 - GILTI top rate 13.125% - US may resist anything above this



Final thoughts

- Acknowledgement that rate setting is sovereign?!
- MLT effectively requires development of a global common corporate tax base
- Lots left to determine
- Should Pillar I be decoupled from Pillar II (e.g. allow BEPS/Pillar I actions to bed in and then apply Pillar 2/ GloBE if still considered necessary)? Despite BEPS, despite substance requirements, OECD still doesn't like no/ low tax jurisdictions
- Overall impact on IOM:
 - General disincentive for MNEs to use low/no tax jurisdictions
 - If minimum size threshold high, MTR is low and global blending: minimal impact?
 - If opposite end of spectrum (either jurisdictional or entity blending): more potential for significant impact





Mandatory Disclosure Rules ("MDR")

David Parsons

19 December 2019

IOM MDR

- Approved by Tynwald (last week) but not yet in force
- Much more limited than equivalent EU MDR
- Note: Other jurisdictions' MDRs can impact IOM providers...
- “Intermediaries” (and potentially taxpayers) required to disclose CRS avoidance arrangements and opaque offshore structures to the Assessor
- CRS avoidance = arrangement designed to, or marketed as, circumventing CRS legislation
- Opaque offshore structure = passive offshore vehicle held through opaque structure
- Retrospective to 29 October 2014 for account values of USD1m or more





Are you prepared for Economic Substance?

David Parsons

19 December 2019

Agenda

- Reminder
- Updated CD Guidance: what's new?
- Common themes
- IOM tax return requirements
- KPMG Economic Substance Tool



Reminder

- Legislation applies to AP commencing on or after 1 January 2019
- New format tax return first applies to 31 December 2019 periods
- In scope if income from any of 9 relevant sectors
- “Substance” = Directed & managed + adequate people/ premises/ expenditure + CIGA
- Rules particularly onerous for High Risk IP companies
- Consequences for failure = Fines + exchange of information + strike-off



Updated CD Guidance: what's new?

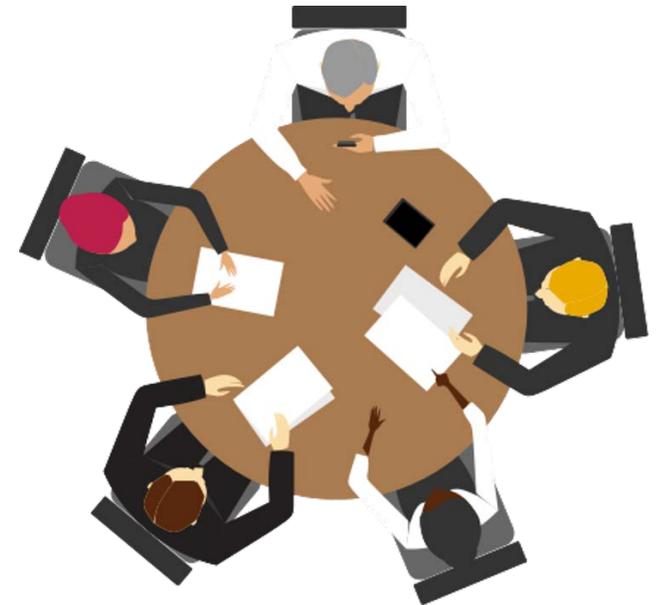
- Insurance
- Shipping
- IP
- High Risk IP (but c.f. November 2018 guidance....)
- Distribution & service centre: not main activity...

Don't expect further IOM guidance any time soon



Common themes: what are we seeing?

- Non-resident claims
- Foreign incorporated and IOM administered....
- IP companies with problems....
- Service centre businesses
- Record keeping: Outsourcing details? Timesheets not used?
- Judgement is required....



IOM Tax return requirements

Mixture of factual and judgemental questions: Directors' responsibility, Eg

- Received income from a relevant sector?
- Number of FTE employees who worked for the company in the IOM during the period
- Strategic decisions of the company are taken by the BoD at the Board meetings? (Which decisions are strategic...?)

Need to evidence decision making

- Financial penalties are substantial
- Beware s80J: fraudulently seek to avoid application of rules (7 years imprisonment)



Economic Substance - Are you prepared?

What should you be doing?

- Establish which jurisdiction's rules apply
- Classification
- Gap analysis
- Taking action to fill any gaps identified
- Collating information for tax returns – policies and procedures
- Preparing tax returns (and retain audit trail of evidence/ documentation)



Economic Substance - Are you prepared (cont'd)?

How can KPMG help you?

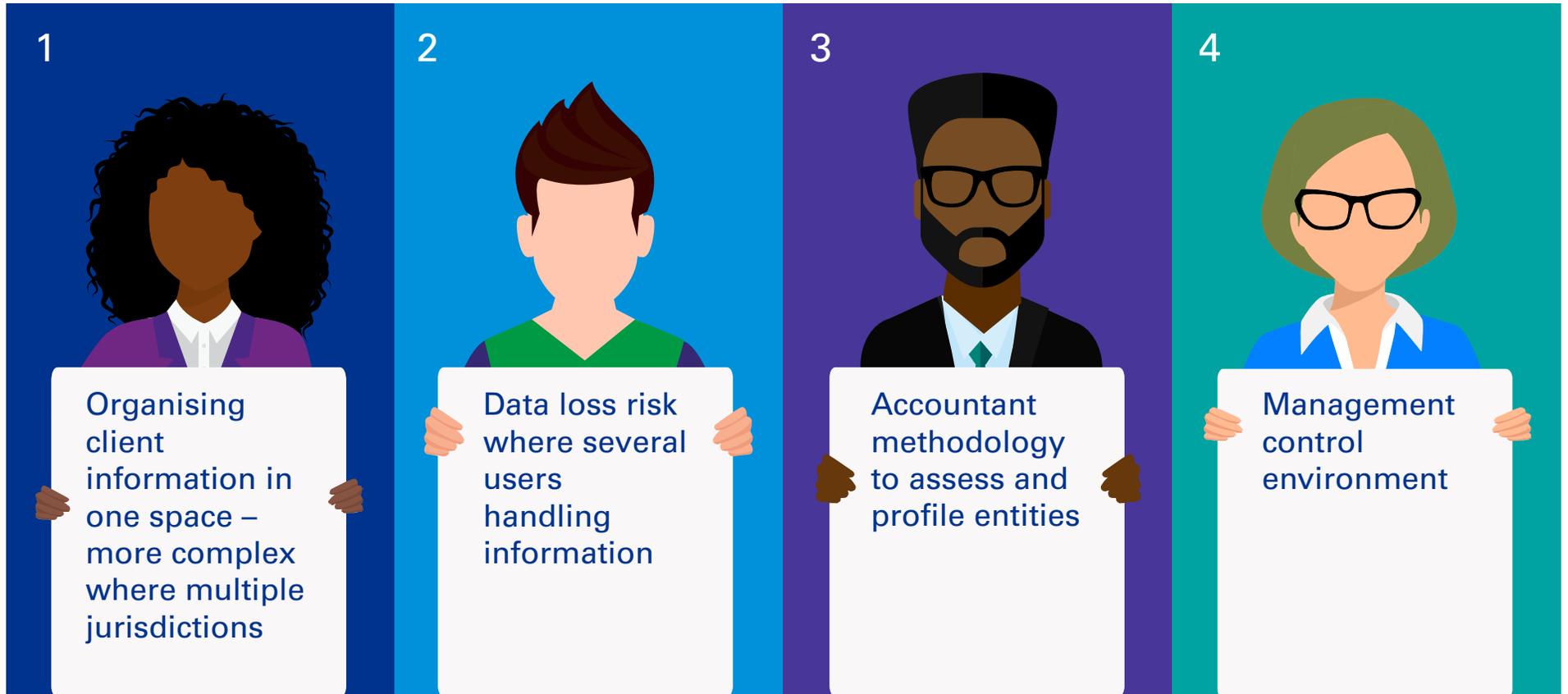
- Classification
- Gap analysis/ taking action to fill any gaps identified
- Collating information for tax returns – policies and procedures
- Unrivalled team in terms of knowledge, experience and insight





Economic Substance Technology

Industry feedback

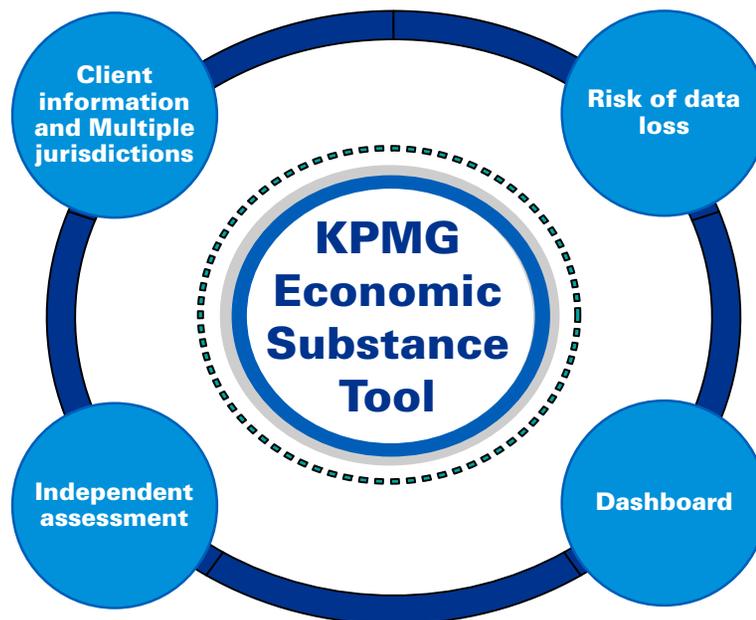


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Our solution





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