



Tax update

Claremont Hotel

14 June 2019





Agenda

Economic Substance: Update

David Parsons

Taxation of Trusts

Justine Howard

**HMRC – the approach to global
information sharing**

Ed Renton

CRS

Clare Kelly

VAT update

Paul Cawley

**Digital economy et al:
future developments?**

David Parsons

Q&A



Economic Substance: Update

David Parsons

14 June 2019



Substance: Update



- 01 **EU Blacklisting decision**
- 02 **Reminder of key points**
- 03 **CD Guidance**
- 04 **Issues ahead**

EU list of non-co-operative jurisdictions for tax purposes

Black

Major transparency concerns

Trinidad and Tobago

No commitment to address EU concerns

- American Samoa
- Guam
- Samoa
- US Virgin Islands

Did not deliver commitment on time

- | | |
|--------------------|-----------|
| — Belize | — Oman |
| — Dominica | — UAE |
| — Fiji | — Vanuatu |
| — Marshall Islands | |

Grey

Albania, Anguilla, Antigua and Barbuda, Armenia

Australia, **Bahamas, Barbados,**

Bermuda, Bosnia, Botswana, **BVI**, Cabo

Verde, Costa Rica, Curacao, **Cayman**

Islands, Cook Islands, Estawni, Jordan,
Maldives, Mauritius, Mongolia, Montenegro,
Morocco, Namibia, North Macedonia, Nauru, Niue,
Palau, Serbia, St Kitts, St Lucia, **Seychelles**,
Switzerland, Thailand, Turkey, Vietnam



Substance: reminder of rules



Substance reminder: what is required?

Stage 1

- Identify company, resident or registered in specific jurisdiction which is carrying on **“relevant activities”**

Stage 2

Economic substance test

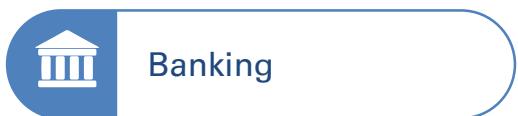
- Directed and managed in the Island in relation to the relevant activities
- Undertaking all CIGA in the respective jurisdiction
- Adequate expenditure, premises and qualified employees

Stage 3

Compliance process

- Tax returns: more detailed information from those that carry on relevant activities
- Draconian penalties
- Exchange details of parent company, ultimate parent company and UBO if resident in EU (to be extended to resident in any jurisdiction where an appropriate exchange agreement)

Stage 1: Relevant activities



Stage 2: Imposition of substance requirements

This is a three part process

01

The company is directed and managed in the specific jurisdiction in relation to that activity

02

The company conducts core-income generation activity ("CIGA") in the jurisdiction

03

Having regard to the level of relevant activity, there are an adequate number of employees, adequate expenditure incurred and adequate premises in the jurisdiction

- Each part must be passed
- Although each part is a standalone test, they are all interlinked
- The test is not a Transfer Pricing test

Stage 2: Part 1 - "Directed and managed"

Companies undertaking relevant activities will be required to demonstrate that the relevant activity is “directed and managed” in the jurisdiction, as follows:

There must be meetings of the Board of Directors in the jurisdiction at adequate frequencies given the level of decision making required

During these meetings, there must be a quorum of the Board of Directors physically present in the jurisdiction

Strategic decisions of the company must be set at meetings of the Board of Directors and the minutes must reflect those decisions

The Board of Directors, as a whole, must have the necessary knowledge and expertise to discharge their duties as a board

All company records and minutes must be kept in the jurisdiction



Stage 2: Part 2 - Core Income Generating Activities ("CIGA")

The law requires that the company conducts CIGA in the Island

CD GNs now confirm that this means ALL CIGA

CIGA means activities being carried on from within the respective jurisdiction

The law then provides a list of activities for each relevant activity that may be regarded as CIGA

The list is not exhaustive

Where CIGA is outsourced to another company, the relevant company must be able to demonstrate that it can **monitor and control** the carrying out of CIGA

A list of the core activities a company operating in such a sector could carry on is provided in the legislation but it is not necessary for the company to perform all of the CIGA listed in order to demonstrate substance.

No CIGA activities may be outsourced outside of the jurisdiction without affecting the company's ability to meet the substance requirements (for example, back office functions, such as IT support).



Stage 2: Part 3 - The adequate test

All companies carrying on a relevant activity must demonstrate:



There are an adequate number of employees in relation to that activity who are physically present in the jurisdiction



There is adequate expenditure incurred in the jurisdiction, and



There are adequate premises in the jurisdiction

Stage 3: Enforcement

Exchange of information

Penalties (up to £100k)

Strike-off

Expect ITD to be MUCH more active on enforcement



CD Guidance: what is missing?

Shipping

Insurance

IP companies

Meeting substance: is it ever too late?

Awaiting outcome of FHTP meeting.....



What trends are we seeing?

Non-resident status decisions (s2N Income Tax Act 1970)

IP companies with minimal substance....

Record keeping (timesheets etc)

Cement into IOM?

Uncertainty over other jurisdictions rules (eg BVI)

Running out of time.....



Issues ahead



- 01 Amendments to the substance legislation arising from FHTP?**
- 02 Expansion of the regime to other entities/ activities?**
- 03 Monitoring of effective implementation of the regime**
- 04 Will there be a challenge to the 0% rate?**



Taxation of Trusts



Justine Howard

14 June 2019

Key changes to trust taxation

- Lots to consider!
- Complex legislation
- Mistakes can be costly under FTC regime
- Key changes to the taxation of settlors and beneficiaries of offshore trusts

Changes	Income Tax	Capital Gains Tax
Trust Protections	6 April 2017	6 April 2017
Close family member payments	6 April 2017	6 April 2018
Onward Gifts	6 April 2018	6 April 2018
Non-residents	N/A	6 April 2018

- Valuation of benefits also now formalised in legislation wef April 2017, eg loan benefits, making movable property available and use of land and property
- Impact of “returning non-dom” settlor for IHT purposes

Trust Protections

- “Protected trust” status means:
 - trust income sheltered until benefits received: usual s731 regime applies;
 - trust capital gains sheltered until benefits received: usual s87 regime applies;
- Failure to meet protected trust status means all income and capital gains may be taxed as it arises on the settlor – no “remittance basis”.
- To be “protected”, a trust must be settled by a non-dom before they become deemed domiciled under the 15/20 rule.
- A trust can never be protected when the settlor is a “returning non-dom” or UK domiciled under general law in the tax year.
- No property or income can be added to a protected trust at any time from the later of the creation of the trust and 6 April 2017 when settlor deemed dom under 15/20 rule or UK dom under general law (also known as “tainting”).
- Tainting is where *“property or income is provided directly or indirectly for the purposes of the settlement by the individual, or by trustees of any other settlement of which the individual is a beneficiary or settlor...”*

Trust Protections (cont'd)

- Planning points:
 - Avoid tainting by carefully considering any transactions between the trustees and the settlor or a trust of which they are a beneficiary or indirect additions to underlying companies.
 - Consider planning before settlor become deemed domiciled under 15/20 rule – eg advancing capital payments to be retained offshore, segregating old and new income etc.
 - Pre-2017 income benefits from transitional rules – note difference if income arises at trust or corporate level.

Close family member payments

- Income Tax
 - Wef 6 April 2017, protected foreign source income ("PFSI") is attributed to a UK resident settlor where it is matched to a close family member ("CFM") benefit which is not taxed because the CFM is non-UK resident or taxed on the remittance basis.
 - PFSI is broadly relevant foreign income that has arisen to a protected trust post 5 April 2017 at a time when the settlor is UK resident and alive.
 - PFSI is an important concept that is also relevant in relation to onward gifts.
- Capital Gains Tax
 - Wef 6 April 2018, capital payments made to a CFM of a UK resident settlor are treated as received by the settlor regardless of the settlor's domicile position and the recipient's own tax position.
- A CFM is defined as a spouse or equivalent (including living together as if spouses), or a minor child of either person.

Close family member payments (cont'd)

- Planning points:
 - Trustees should consider keeping detailed records of distributions to CFMs and notifying the settlor when such distributions are made.
 - Remittance Basis may apply if benefit received overseas by CFM and settlor is non-dom. Trustees should consider if tax planning is possible?

Onward Gifts

- Wef 6 April 2018 for both IT and CGT purposes where an individual who is either not UK resident or a remittance basis user receives a benefit or distribution from a trust and this is paid to a UK resident recipient **up to 3 years after or any time** before the original receipt, treat it as received by UK resident recipient and subject to UK tax **if there was an intention to make the onward gift** when the original benefit was received.
- Note differences in the rules depending on whether the benefit or distribution from the trust is subject to the IT or CGT rules.
- For IT purposes rules only apply where the trust has PFSI. Therefore onward gift rules for IT purposes should broadly not apply where the settlor has always been non-resident.
- The CGT rules can however still apply even if IT rules do not.
- NB the rules apply even where the original benefit was provided before 6 April 2018 if gift made on or after.
- NB the rules apply if gift is made at any time before original benefit provided, ie no time limit.

Onward Gifts (cont'd)

- Section 87I(8) TCGA 1992 provides a rebuttable presumption as to intention
- Planning points:
 - Consider segregating any trust distributions and only make any onward gifts after 3 calendar years from the date of the original distribution.
 - Can still make gifts out of assets that do not derive from trust distributions.
 - Onus on taxpayer to prove intention to gift was not there at time of original receipt.
 - Ideally a UK resident in receipt of a gift from a non-UK resident should enquire as to whether he/she is caught by these rules.

Non-Residents

- Wef 6 April 2018 capital payments made to non-UK resident beneficiaries will not reduce stockpiled gains of the trust
- Capital payments made to non-resident before 6 April 2017 will wash out stockpiled gains but only if matched with gains pre-April 2017
- Payments to a non-resident beneficiary will not be disregarded in this way in the final year of a settlement if payments are made to at least one resident and one non-resident beneficiary
- Planning points:
 - Consider making regular annual payments to UK residents to utilise personal tax-free allowance and lower rate bands.
 - Consider advancing payments to beneficiaries before they become UK resident or delaying until they become non-UK resident.

Summary

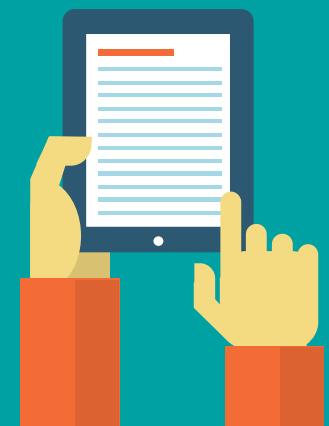
- Regular reviews of trust structure including residence and domicile status of settlor and beneficiaries.
- Increased emphasis on trustees to:
 - monitor payments to close family members;
 - avoid tainting protected trusts;
 - recognise a “returning non-dom” for IHT purposes; and
 - consider onward gift rules.
- The relevant legislation should always be consulted prior to taking any action.
- Significant increases in penalties under Failure to Correct regime means penalties can be up to 200% and mistakes can be more costly than ever.
- It is still beneficial to make voluntary disclosures should any outstanding liabilities come to light as penalties may be mitigated and reduced to 100%.



HMRC - the approach to global information sharing

Ed Renton

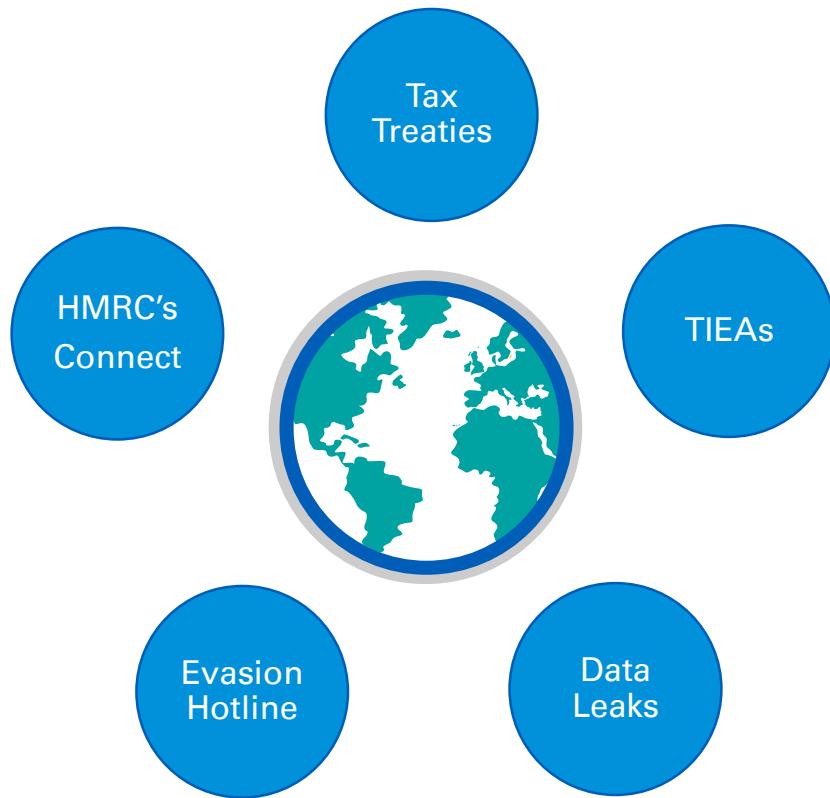
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HMRC Single Departmental Plan

- Invest £800 million in additional work to tackle evasion and non-compliance in the tax system, with a further £155 million of investment announced at Autumn Budget 2017 for future years up to 2019 to 2020.
- Raise an additional £5 billion a year on 2015 to 2016 figures by 2019 to 2020 by tackling tax avoidance and aggressive tax planning, evasion and non-compliance, and by addressing imbalances in the tax system.
- Increase the number of criminal investigations that we undertake into serious and complex tax crime, focusing particularly on wealthy individuals and corporates, with the aim of increasing prosecutions in this area to 100 a year by the end of the Parliament.
- Review the country-by-country tax reporting rules and consider the case for making this information publicly available on a multilateral basis

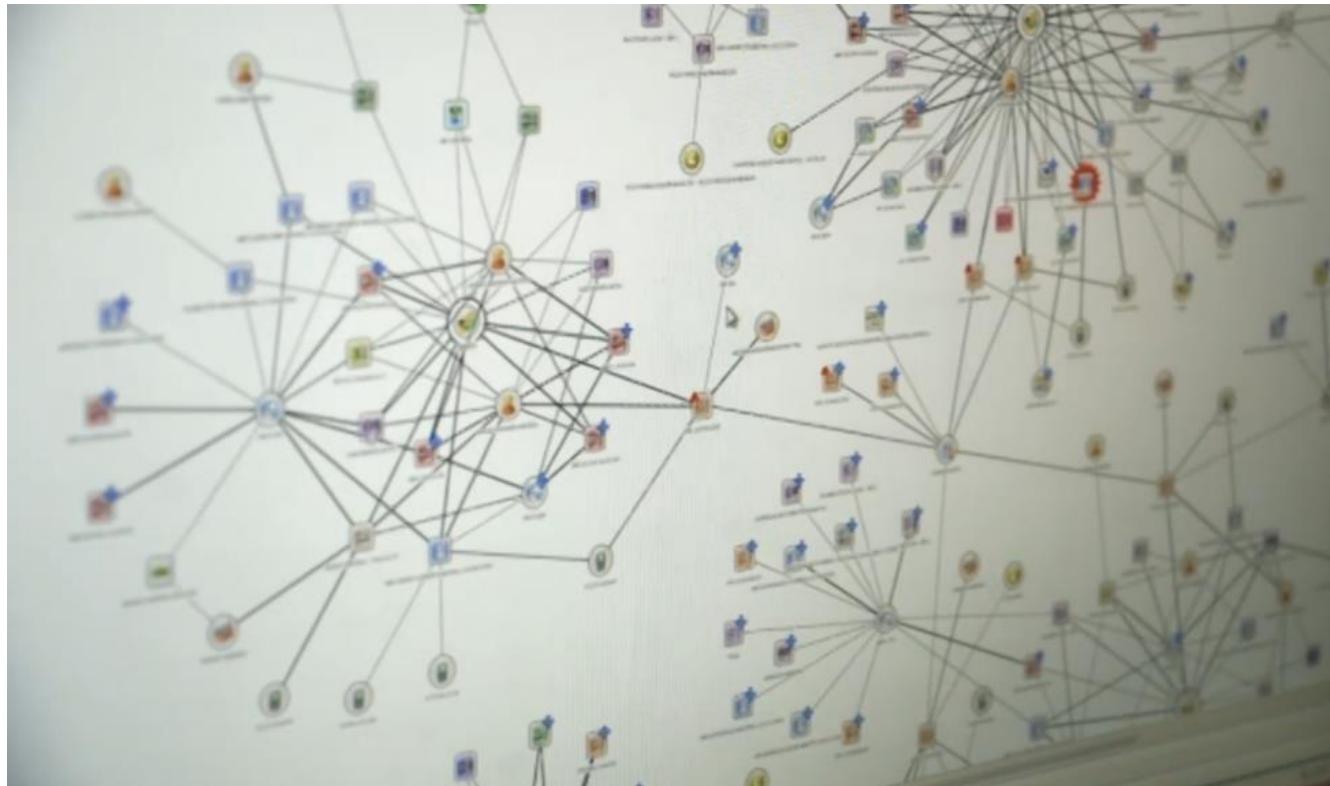
A shrinking world



Connect

SA return data	CRS Data	DVLA	Social media
Land registry	Airbnb	VAT registrations	Rightmove/Zoopla
Debit/credit card receipts	Electoral Roll	Child benefit	Pensions
Bank data	Charity commissions database	Online market places	DWP information

Connect



Connect-Who

Matched?	UK Domicile?	Foreign Income percentage of offshore balance
Are they on Self-Assessment?	RBC paid?	Total income
Value of offshore balance	Foreign Income?	Value of UK property

HMRC - Certificate of tax position



HM Revenue & Customs

Certificate of tax position – To complete and return to HMRC

Risk and Intelligence Service
Offshore
WMC
HM Revenue and Customs
BX9 3LH

Our ref: [REDACTED]
Your ref: [REDACTED]

Declaration

- I confirm that the information I give on this form is correct and complete to the best of my knowledge and belief.
- I understand that choosing to make a false statement or complete a false certificate is a criminal offence that can result in investigation and prosecution.

Your name: _____

Your address:

Signature _____

Date: ____/____/____

Your tax position

- Choose which statement is accurate for your circumstances and tick the relevant box.
- Please complete and return this form by 7 February 2019

1 I need to bring my tax affairs up to date. I will declare all of my UK tax irregularities using HMRC's Worldwide Disclosure Facility.

Please be aware:

- You must register with the Worldwide Disclosure Facility to be able to use it
- Returning this certificate does not mean that you have registered to use the Worldwide Disclosure Facility.

You can talk to a tax advisor or visit our website: go to www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure to find out how to register.

2 My tax affairs do not need updating. I do not have any additional tax to pay. I have declared all of my offshore income, assets and gains which are taxable in the UK.

Please be aware:

We will use the information we have to check whether the statement you have made is correct. HMRC is getting significantly more information on financial assets held abroad by UK residents.

HMRC powers: Increased offshore penalties

Failure to Correct	Offshore asset moves	Asset based penalties
<ul style="list-style-type: none">— ‘Baseline’ penalty is 200% which can be mitigated down to 100%— Failure to voluntarily disclose increases minimum penalty to 150%— Name and shame: Where more than one RTC penalty is incurred	<ul style="list-style-type: none">— Offshore asset moves penalties which increase the FTC penalty by 50% (increasing the maximum RTC penalty to 300% of the tax)	<ul style="list-style-type: none">— Asset based penalties in cases of deliberate behaviour: Lower of 10% of asset value or 10 times the tax due.

Impact on 2017/18 tax return: Strict Liability Offence



Applies from 2017/18 tax year and relates to offshore matters only

Offences will include:

Failure to file a correct return

Failure to notify chargeability

Failure to file a return

Maximum sanction is **six months imprisonment** (where unpaid tax is £25,000 or more per year)

Not necessary for HMRC to prove deliberate or careless behaviour

Will not apply to assets reportable under CRS – cryptocurrency?

Penalties for 'Enablers' - FA 2016 Sch 20

- Identification of 'enablers' a priority
- Aimed at 'non-compliance' – far broader than 'evasion' and includes simply being careless.
- A person has enabled another person to carry out non-compliance if:
 - Condition A
 - The 'enabler' knew that their actions were likely to enable the individual to be careless in relation to their UK taxes, and
 - Condition B
 - The individual has been charged or agreed to pay a careless penalty.

'enabled' means encouraged, assisted or otherwise facilitated conduct by that person.

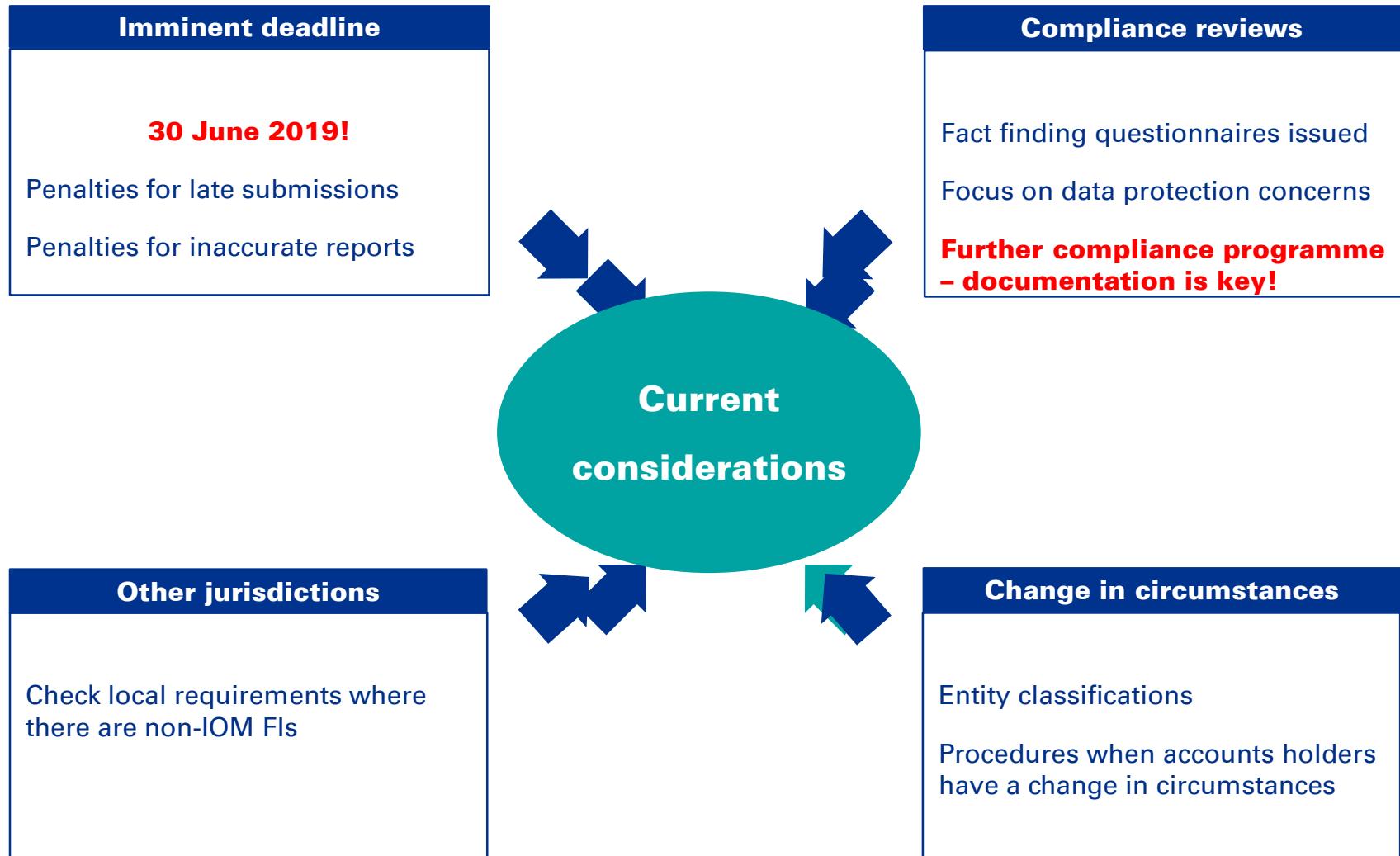
- The penalty is 100% of the tax due.



CRS

Clare Kelly

14 June 2019





NRLs into Corporation Tax



Considerations pre-6 April 2020

Overview	Detail
Impact assessment	<ul style="list-style-type: none">• Perform an overall impact assessment of the move from IT to CT
Software	<ul style="list-style-type: none">• Software will be required to produce CT return• iXBRL tagged accounts may be required
Loan financing	<ul style="list-style-type: none">• Impact of the Corporate Interest Restriction rules
Losses	<ul style="list-style-type: none">• Recent changes to the corporation tax rules provide more flexibility for the use of losses
Accounting	<ul style="list-style-type: none">• Consider tax rate used in deferred tax calculations• Disclosure in accounts about future tax changes
Payments	<ul style="list-style-type: none">• Consider revised payment dates• Transitional rules re quarterly payment rules
Disposals of UK property pre-6 April 2020	<ul style="list-style-type: none">• Requirement to complete UK corporation tax return for disposal• Consider valuation of commercial property for use in future sales

Corporation tax losses

NRL considerations

- Transitional rule: income tax losses as at 5 April 2020 to be carried forward and set off against corporation tax ("CT") profits
- Normal CT loss relief rules will apply for post-6 April 2020 losses
- Potential for property losses to be set against chargeable gains on the disposal of property
- NRL is considered to be part of UK group for group loss relief purposes

Recent corporation tax changes

- **Relaxation** on the use of losses – group loss relief / more flexibility in the use of losses against total income
- **Restriction** on the use of losses – losses in excess of £5m
- Potentially burdensome **administration** requirements



VAT update

Paul Cawley

14 June 2019

Brexit round-up



- Default position = No Deal exit 31 October 2019.
- Is the Withdrawal Agreement now dead?
- Next step: await new PM appointment:
 - Ballot 1 on 13 June : 17 votes required
 - Ballot 2 on 16 June : 33 votes required
 - Further ballots only held if necessary.
 - Result w/c 22 July
- Johnson approach : pursue a deal, but leave EU on 31 October = greater chance of No Deal.
- Hunt approach : No Deal is “last resort”, prepared to extend Art 50 to secure a deal.

Aircraft/Yachts

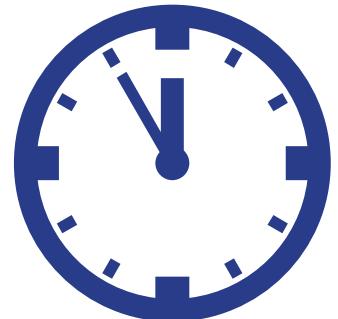
Brexit

- Careful planning is advisable, especially if post-Brexit EU27 travel is expected.
- In the event of a “No Deal” a strong emphasis on the physical location of the asset on Brexit day is necessary.
- HMRC/ IoMC&E have given certain re-assurances for UK/IOM imported yachts/ aircraft but there is little support offered in policy or law.

EU infringement

- HMRC “report” into IOM import practices : was expected around December and is still expected, but no firm commitment.
- IoMC&E have not changed their requirements or practices.
- VAT assurance programme is to continue.

Making Tax Digital ("MTD") for VAT



Who is in scope?

UK (not IOM!) VAT registered businesses operating above the VAT threshold (currently £85K)

When did/ will MTD come into force?

First VAT period commencing on/ after 1 April 2019 or the first VAT period commencing on or after 1 October 2019.

Who can wait until October?

"trusts, 'not for profit' organisations that are not set up as a company, VAT divisions, **VAT groups**, those public sector entities required to provide additional information on their VAT return (Government departments, NHS Trusts), local authorities, public corporations, **traders based overseas**, those required to make payments on account and annual accounting scheme users."

All October qualifying businesses should have been notified.



Complying with MTD

Businesses are required to keep certain records digitally in compatible software, such as:

- Designatory data (e.g. business name, VAT number etc.)
- Supplies received
- Supplies made
- Reverse charge transactions
- Summary data (i.e. totals for each box on the vat return)
- Totals of adjustments made (although the adjustments themselves can be calculated outside of the software)
- Users of VAT schemes may be required to keep different record

Software must be able to:

- provide HMRC with information and returns from data held in those digital records by using the API platform; and
- receive information from HMRC via the API platform

API = Application Program Interface

Digital links between pieces of software are mandatory after the 'soft landing period'.

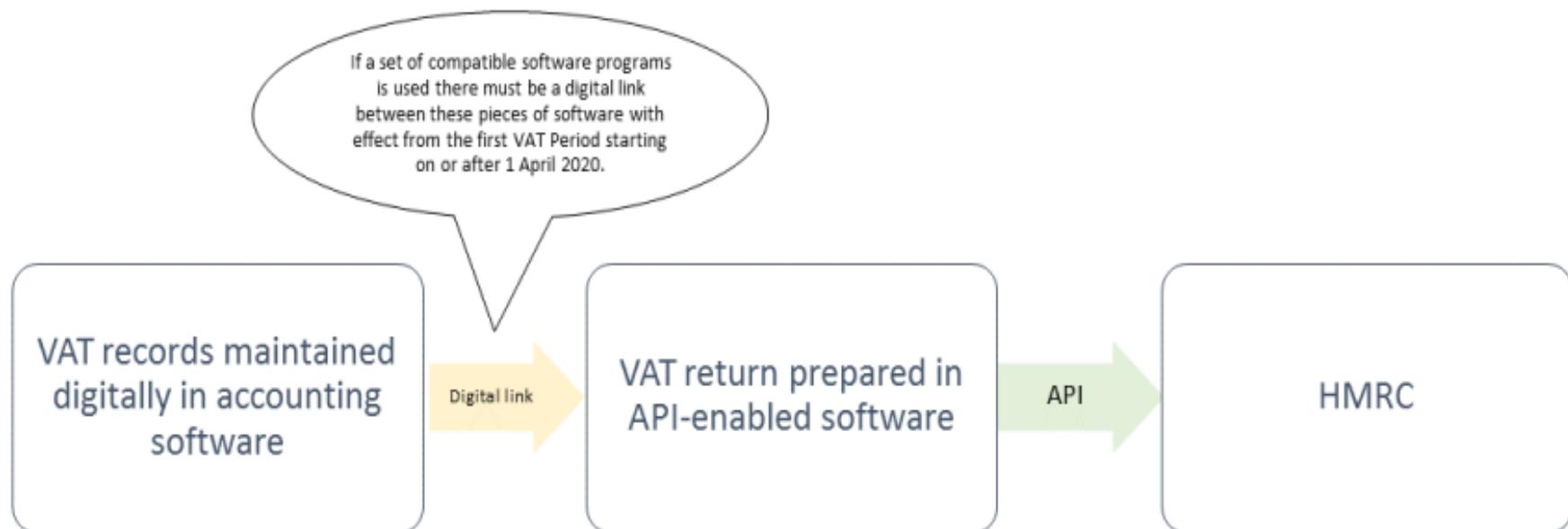


Using Spreadsheets and Bridging software

For the first year after a business is required to be MTD compliant they are not required to have digital links between the accounting software they use and their VAT return.

After the soft landing period (1 April 2019 - 2020) there must be a digital link between the accounting software and the VAT return.

Using API enabled software and accounting software





Digital economy et al: future developments?

David Parsons

14 June 2019



Future developments



- 01 **UK Digital Services Tax**
- 02 **OECD and tax challenges of digital economy**
- 03 **Will there be a challenge to the 0% rate?**
- 04 **Public beneficial ownership registers....?**

OECD work on tax challenges from Digital economy

“The work on the tax challenges of digitalisation has revealed some more fundamental issues of the existing international tax framework, which have remained after the delivery of the BEPS package.”

“A further issue is the recognition that if [the OECD] does not deliver....there is a risk that more jurisdictions will adopt uncoordinated unilateral tax measures.”

“One of the focal points of dissatisfaction relates to how the existing profit allocation and nexus rules take into account the increasing ability of businesses...to participate in the economic life of a jurisdiction without an associated or meaningful physical presence.”



OECD work on tax challenges from Digital economy (cont'd)

Pillar One: Revised Nexus and Profit Allocation Rules

- Allocate more taxing rights to the jurisdiction of the customer/ user
- Allow for taxing rights even where no physical presence
- Amend permanent establishment definition where “remote yet sustained and significant involvement in the economy of a jurisdiction”?
- Or amend rules re taxing income from a particular source?
- Amend Treaties etc to coordinate globally



OECD work on tax challenges from Digital economy (cont'd)

Pillar Two: Global anti-base erosion proposal

"have agreed to explore an approach that leaves jurisdictions free to determine their own tax system, including...where they set their tax rates, but...."

- Income inclusion rule: Top up to a minimum rate (supplements CFC rules)
- Tax on base eroding payments: undertaxed payment rule/ subject to tax rule



So, OECD not directly challenging our 0% rate, BUT.....



Thank you

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