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**Introduction**

- Approach to identifying tax risks has changed
- FATCA / IGA / CRS will provide huge amounts of data to tax authorities
- Requirement to Correct is a step change in approach from HMRC
- Corporate Offence provides opportunity for strategic approach to managing tax risk beyond tax evasion
- Clear change in mindset & approach in marketplace
Requirement to Correct and HMRC interventions
Agenda

What have we learned from previous disclosure facilities?

Where are we now?

Where are we going?
Deliberate behaviour/concealed/fraud, some examples:

- UK trading income not declared
- Overseas contracts for UK businesses deposited in overseas bank accounts
- Working overseas when non resident, assets not declared upon returning to the UK
- Investment income knowingly omitted
- Family money never declared - many generations - IHT/CGT/IT
- Sham offshore structures
- Movement to other jurisdictions to avoid detection
Voluntary disclosure - examples (2)

Non deliberate or careless behaviour (?), some examples:

- Remittances to UK - cash, credit cards, constructive
- UK source income
- UK situs assets acquired using mixed funds
- Attribution of gains to shareholders
- Management and Control of offshore companies
- Benefits from offshore structures - loans, accommodation, high value assets
- Tax advice not taken or not properly implemented
- Inherited a problem from a relative that they were unaware of
Voluntary disclosure - examples (3)

Trustees and offshore company directors, some examples:

- IHT 10 year charges
- IHT exit charges
- UK source income
- Non Resident Landlord Scheme
- Failure to notify to HMRC
Requirement To Correct

— “on hold”

— Final chance for any offshore non-compliance to be corrected

— Deadline of 30 September 2018

— Unprecedented sanctions thereafter
Requirement to Correct (RTC)

— Any person with UK tax irregularities related to offshore interests has a new obligation to correct those liabilities – by 30 September 2018

— Date reconciles with CRS information exchange

— Not only evasion cases – all non-compliance

— Any person who is found to have failed to have corrected their affairs will be subject to a new set of sanctions for this ‘Failure to Correct (FTC)’

  - Penalties 200% reduced to a minimum of 100%, + for more serious cases
  - Up to a 10% asset based penalty (cases over £25,000 tax in any year), +
  - ‘Naming and shaming’ (£25,000 covering all years)

— What needs to be corrected?

— Only defence is someone had a reasonable excuse not to correct
Worldwide Disclosure Facility (WDF)

— Opened 5 September 2016
— Available through to 30 September 2018
— Disclose UK tax liabilities that relates wholly or partly to an offshore issue
  - Income arising from a source outside the UK
  - Assets situated or held outside the UK
  - Activities carried on wholly or mainly outside the UK
  - Funds connected to a UK liability transferred outside the UK
— No immunity from prosecution
— No beneficial terms (but do not face significant sanctions that apply thereafter)
Worldwide Disclosure Facility (WDF)

- Two stage process –(1) Notification, (2) Complete disclosure & pay tax, interest and penalties within 90 days
- Requirement to self assess what years are included in disclosure
- Requirement to self assess what penalties apply
- Both years and penalties based on judgement on behaviour
- Complex cases- time limits
- Need to consider whether WDF is correct route to make a disclosure
Why behaviour is so important?

Categories:

— Reasonable care /reasonable excuse
— Careless behaviour
— Deliberate behaviour
— Deliberate and concealed behaviour
Why behaviour is so important?

**Time limits for assessing tax:**

- 4 years - normal time limit regardless of behaviour
- 6 years - careless behaviour giving rise to a loss of tax
- 20 years – deliberate behaviour giving rise to a loss of tax
- 20 years - Failure to Notify Chargeability
- IHT - deliberate failure to deliver an account - time unlimited
- Behaviour is that of the taxpayer or someone acting on behalf of the taxpayer
Why behaviour is so important?

**Penalties:**

- Reasonable care (0%)
- Careless (0-30%)
- Deliberate (20-70%)
- Deliberate and concealed (30-100%)
- Offshore penalties increase by a factor of 1/1.5/2
- Behaviour is looking at taxpayer
- Naming and Shaming
- Asset based penalties
Why behaviour is so important?

**Reasonable care?**

- Took tax advice from a competent advisor?
- Provided advisor with all the facts?
- Advisor gave the advice?
- Advice was fully implemented?
- Advice was, if necessary, sought and implemented to deal with legislation changes (i.e. advice is up to date)
- RTC response document links this to Reasonable Excuse
HMRC interventions

— US/UK IGA
— Panama papers
— Swiss assets
— Certificates requiring taxpayer to reaffirm compliance for all time or use the WDF
— A sign of what to expect in the CRS world?
— Contractual Disclosure Facility (COP9)
— Code of Practice 8 investigations
— New criminal charge for failure to declare offshore income and gains (£25k tax loss in year/non CRS assets and territories) - no intent required
— More use of information requests
**Basis of enquiries**

**S9A TMA 1970 legislation re enquiry**
- Informal information request

**S29 TMA 1970 legislation re discovery assessment**
- Where there is an understatement of tax and HMRC were not in possession of the facts or careless/deliberate behaviour by taxpayer

**Schedule 36 FA 2008 Information Powers**
- Sch 36 para 1(1) FA 2008 “…if the information or document is *reasonably required by the officer* for the purpose of checking the taxpayer’s tax position.”
- Sch 36 para 2 (1) FA 2008 “… if the information or document is *reasonably required by the officer* for the purpose of checking the tax position of another person whose identify is known to the officer.”
  - Taxpayer or tribunal approval
  - Appeal if unduly onerous
HMRC enquiry

Line of enquiry

“I want to be satisfied your client has declared all remittances to the UK correctly. Please provide the following:

a) Details of all UK bank (deposit, investment, current etc) and credit card accounts operated in the year ended 5 April 2016. To include name on account, type of account, details of Financial Institution

b) Details of all non UK bank accounts (deposit, investment, current etc) and credit card accounts operated in the year ended 5 April 2016. To include name on account, type of account, details of Financial Institution

c) Copies of all bank statements for accounts listed at (a) and (b) above

d) A statement of your client’s worldwide assets and liabilities as at 5 April 2016 and in particular details of how assets acquired during the year ended 5 April 2016 were funded?

e) Details of any services or suppliers in the UK your client paid for using overseas funds during the year ended 5 April 2016, including copy invoices.”
Case study 1

— 3 offshore bank accounts with 1 bank- always properly segregated capital, income & gains
— Taken tax advice throughout including set up of bank accounts when came to UK
— Capital was accumulated before coming to UK – sale of an overseas business when NR/ND
— Significant UK income declared on tax return - this funds his UK lifestyle
— Main residence in UK funded from clean capital when first coming to UK
— Remitted funds from income account in past – on tax return
— Has always paid the RBC
— 75 offshore bank accounts with 20 Financial Institutions – segregation position not clear
— Advises his tax advisor he never remits taxable amounts to the UK
— Main source of capital is “family” money from outside the UK
— Advises his offshore accounts are “none of HMRC’s business”- “why he pays the RBC”
— Very little UK income declared on tax return - i.e. not obvious how he funds his UK lifestyle
— Significant UK assets acquired in last 10 years including main UK residence
— No remittances ever declared on tax return
Summing up

Clients do not have to fall foul of RTC/FTC but need to be clear they have no issues to resolve

Trustees/offshore directors- take precautionary risk assessment measures now

RTC is a step change and consequences if no correction made when needed are significant

Anticipate more HMRC interventions going forward

Clients and advisors should have a clear strategy for dealing with enquiries
Corporate criminal offence of failure to prevent the criminal facilitation of tax evasion
Introduction

New corporate offences of failure to prevent the criminal facilitation of tax evasion;

— Criminal Finances Act received Royal Assent 27 April 2017
— Final HMRC + BBA guidance expected after 8 June 2017
— Offences expected to be effective from September 2017
Background

— Politics
— Change in HMRC approach; no longer just pursuing the evader
— Based upon Bribery Act 2010 framework
What constitutes an offence?

1. Criminal tax evasion

2. Criminal facilitation of this offence by a person associated with the organisation

Guilty of an offence unless the corporation had reasonable procedures to prevent the facilitation

Penalties =
- unlimited financial penalties
- ancillary orders such as confiscation orders or serious crime prevention orders
Reach

UK offence

Any corporation (wherever in the world) fails to prevent its representatives from criminally facilitating a UK tax loss

Foreign offence

Relevant bodies with a UK nexus
Associated Persons

An entity may be considered to have committed an offence where an “associated person” has criminally facilitated the evasion of tax, unless the entity can prove that it had reasonable procedures in place to prevent the criminal conduct by the associated person.

Who is an associated person?

A person (or entity) who provides services for or on behalf of the entity.

Where services are not provided directly or indirectly to the customers, clients or counterparties of an entity, it is likely that services are provided ‘to’ the entity, rather than ‘for or on behalf of’ the entity.

Examples of an associated person

- KPMG uses a sub-contractor to provide document specialist due diligence services to assist in understanding the risks in a particular jurisdiction
- KPMG uses a team of contractors on an Anti-Money Laundering Remediation engagement
- KPMG uses a law firm to assist a client set up an offshore tax structure in the Cayman Islands
- KPMG uses a member firm in another country to complete fieldwork on a governance, risk and controls review of a UK listed subsidiary in that country
The defence - Reasonable procedures

Six Guiding Principles

- Risk assessment
- Proportionality of risk-based prevention procedures
- Top level commitment
- Due diligence
- Communication (including training)
- Monitoring and review
Practical steps - Starting off

Understand the legislation – not a tax issue but a business conduct issue

Work out who in your organisation needs to be involved

Create a project team to lead the work

Understand what criminal evasion and criminal facilitation are

Plan how you’ll do your risk assessment
Practical steps - Next stages

— Do a high-level risk assessment
  - Assume some of your clients are tax evaders
  - Assume someone in your organisation or an associate will aid and abet
  - Don’t rely on compliance with your processes – criminals will ignore them
— Carry out more focused risk assessments, particularly in areas where the risks are higher
  - Consider financial services, advisory services, etc.
  - But also consider your supply chains, payment processes, etc.
— Map out the procedures you need to ensure your response is reasonable
  - Draw on existing AML and ABC procedures. Do a gap analysis
— Cross-check that you are aligned with the approved guidance: HMRC and sector
— Design changes in procedures, IT, staff training, etc. that you’ll need to deliver. Do not forget to include a ‘Tone from the Top’ message
— Project manage their delivery
— Do what you can by 31 August 2017; do the rest as quickly as is reasonable
— Plan to review and develop your procedures after one or two years
— Record all this – expect that you will need to evidence their reasonableness
How are we helping clients?

— Monitoring the passage of the Bill and the proposals for change
— Help with understanding of the proposals
— Workshop to help assess risk of facilitation, including in the supply chain
— Mould existing controls and procedures (e.g. AML, Bribery Act) which could form part of ‘reasonable procedures’
— Perform a gap analysis
— Advice on design of additional procedures
— Design/deliver training to CRMs
— Review of internal projects, including input into risk assessments and review of methodologies and implementation plans
Tax Risk Management Framework

- Define & Communicate Tax Risk Appetite
- Monitor, Report & Review
- Tax Evasion
- Risk Assessment / Define Control Objectives
- Communications
- Due diligence
Tax Risk Management Framework

Define & Communicate Tax Risk Appetite

Monitor, Report & Review

Risk Assessment / Define Control Objectives

Communications

Due diligence

Tax Risk

Example Tax Risk Appetite

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<th>Tax Avoidance</th>
<th>Abusive Tax Avoidance</th>
<th>Tax Evasion</th>
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Basic steps

Policies and procedures
- Policies and procedures must be documented and tax specific
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Client & engagement acceptance
- Tax risk appetite
- Identifying tax risks
- Obtaining and understanding tax advice
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Monitoring
- Acting on that tax advice
- Identifying exceptions to that advice
- Staff training
Basic steps

Policies and procedures
- Policies and procedures must be documented and tax specific

Client & engagement acceptance
- Tax risk appetite
- Identifying tax risks
- Obtaining and understanding tax advice

Escalation and approval
- Documentation and checklists
- Approval mechanisms

Monitoring
- Acting on that tax advice
- Identifying exceptions to that advice
- Staff training
Typical UK tax issues seen day to day

- **IHT 10 year charge** (typically UK situs assets held in UK RND trust)
- **Relevant income / stockpiled gains matched with capital payments**
Typical UK tax issues seen day to day

- IHT 10 year charge (typically UK situs assets held in UK RND trust)
- Relevant income / stockpiled gains matched with capital payments
- UK source income in trusts (including EBTs)
- IHT exit charges
Typical UK tax issues seen day to day

- IHT 10 year charge (typically UK situs assets held in UK RND trust)
- Relevant income / stockpiled gains matched with capital payments
- UK source income in trusts (including EBTs)
- IHT exit charges
- Late ATED returns and payments
- Transfer pricing & interest deductions
- Settlor liabilities (e.g. CGT / IT), and IHT entry charges
Key messages

- Revenue authorities approach to identifying tax risks has changed so yours should too
- Prepare for “Corporate Offence” but take opportunity to think about tax risk more widely
- Have a clear policy, proportionate procedures and comprehensive documentation
- Review client book for “Requirement to Correct” cases taking a risk based approach
- If in doubt, consult
Questions?
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