

Client notification obligations and the wider tax evasion climate

10am to 11:30am
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Today's presenters



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- Introductions and admin
- An overview of the wider tax evasion climate
- The client notification regulations
- Practical points – the view from practitioners
- Question and answer session

- Questions: please use the button on your screen to send us your questions
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Practical Tax People
Association of
Taxation Technicians



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The Wider Tax Evasion Climate

Requirement to Correct Offence



- 18 month window to correct historical issues, from **April 17** to **September 2018**
- Timed to coincide with data from **Common Reporting Standard (CRS)**
- Requires correction of any non compliance before **April 2017** (tax years up to 2015/16)

Requirement to Correct Offence



- Penalty models for not correcting
 - Max 200%
 - 10% asset based penalty (where tax is over £25,000)
 - 50% Move penalty where action taken to avoid CRS
 - Publish Deliberate defaulters regime (Naming and Shaming)
 - HMRC are looking at extending to Enablers legislation

Recent and proposed legislation



- New Criminal Offence for Offshore Tax Evasion
- Increased Civil Sanctions for Offshore Evaders
- Civil Sanctions for those who Enable Offshore Tax Evasion
- The Corporate offence of failure to prevent the facilitation of tax evasion

New Criminal Offence for Offshore Tax Evasion – Finance Act 2016

Increased Civil Sanctions for Offshore Evaders – both FA2015 and FA2016

Civil Sanctions for those who Enable Offshore Tax Evasion – FA2016

Corporate Criminal Offence is in the Criminal Finances Bill (sections 36 onwards) currently going through Parliament.

Worldwide Disclosure Facility



- Anyone who wants to disclose a UK tax liability that relates wholly or partly to an offshore issue can use the facility.
- No immunity from prosecution, normal terms eg reasonable care, careless deliberate
- Register using HMRC's Digital Disclosure Service
- Code of Practice 9
- Notify compliance Inspector

The Client Notification Obligations

Client Notification Requirements



- Section 50 Finance (No 2) Act 2015
- Came into force on **30 September 2016**
- Members have until **31 August 2017** to comply
- Obligation on advisers to send HMRC branded letter to certain clients and insert standard paragraphs in the cover letter/email

- Introduced by Finance (No 2) Act 2015 section 50 which imposes client notification obligations on specified relevant persons
- Brought into force on 30 September 2016 by the International Tax Compliance (Client Notification) Regulations 2016 (SI 2016/899)
- These insert regulations 12A-12F into the International Tax Compliance Regulations 2015 (SI 2015/878)

- Members have until 31 August 2017 to comply with the requirements
- HMRC branded letter contains information about the sharing of financial data under the Common Reporting Standard, recommends that taxpayers review their tax position if they are unsure whether they are compliant and explains how to come forward using the new online disclosure facility.

Background and what the CIOT has done



- No formal consultation
- Draft clause published summer 2015
- We made representations opposing the measure
- We engaged with HMRC following enactment to seek to mitigate the cost and impact on our members

What if I don't comply?



- Clients failing to correct their tax position
- Flat rate penalty of £3,000
- Breach of professional rules
- Failure to send the letter out could result in clients failing to correct their tax position leading to a failure to correct penalty
- An adviser who fails to comply could be liable to a flat rate penalty of £3,000
- No penalty will apply if an adviser has a “reasonable excuse” for non-compliance
- The penalty must be notified by HMRC within 12 months from 1 September 2017
- An appeal against a penalty can be made to the tribunal
- HMRC will look at the systems and processes in place to ensure that notifications have been sent to the correct clients
- Where it is clear that all reasonable steps have been taken to put in place processes to identify the right clients and to send them a notification, then it is unlikely a penalty will be charged, even where some clients are missed out or extra ones included
- Where it is clear that little or no effort has been made, the penalty is likely to be due
- To minimise the risk of a penalty, it would be sensible for advisers to keep a record of why and to whom a letter was (or was not) sent, and when, in order to demonstrate that reasonable steps were taken to comply
- A fundamental principle of CIOT and ATT membership is that ‘a member is required to comply with relevant laws and regulations’ (see para 2.1 of Professional Rules and Practice Guidelines 2011 – available on both CIOT and ATT websites)
- Deliberate non-compliance with the regulations would therefore be a breach of this fundamental principle which could lead to disciplinary action

Does it apply to me?

- The obligations apply to :
 - Specified financial institutions (SFIs), and
 - Specified relevant persons (SRPs)
- Concentrate on SRPs
- SFI obligations (more onerous) relevant if financial institution
 - eg a bank or investment manager
- Concentrate on rules relating to SRPs as these are most relevant to CIOT and ATT members.
- However, groups or clients that include financial institutions, such as banks and investment managers, should consider the different SFI obligations.

What is a SRP?

You will be a SRP if:

1. You are a relevant person under Finance (No 2) Act 2015 section 50(5). Relevant person means:

- (a) a tax adviser (as defined by Finance Act 2014 section 272(5), and
- (b) any other person who in the course of business –
 - (i) gives advice to another person about that person’s financial or legal affairs, or
 - (ii) provides other financial or legal services to another person **AND**

2. In the year to 30 September 2016, you:

- (a) provided ‘offshore advice or services’ in the course of business, which is not solely in connection with the preparation and delivery of returns and accounts, statements and documents, as required under TMA 1970 section 8; or
- (b) referred an individual to a connected person, for example a subsidiary, outside the UK for the provision of advice or services relating to the individual’s personal tax affairs.

- ‘Offshore advice or services’ means advice or services relating to;
 - A financial account;
 - A source of relevant foreign income;
 - A source of employment income; or
 - An asset.
- Specifically, this is any of the above that are situated in, or arise from, the United States of America, or a participating jurisdiction (having agreed to adopt CRS, and is one of the 101 signatories to Schedule 1 to the International Tax Compliance Regulations 2015)

Overseas persons

- *The notification obligation may apply to overseas persons*
- *An overseas person is a body corporate or partnership who would be a SRP if they were in the UK.*
- *Where an overseas person, such as a subsidiary, is controlled by a UK SRP that is a body corporate, the UK person must take all such steps as are reasonably open to them to ensure that the overseas person makes a relevant notification by 31 August 2017*
- *Control takes the meaning in CTA 2010 section 1124.*
- *Further guidance is in IEIM607000 onwards.*

Exceptions from SRP status



- The offshore advice and services (or referral) are only provided to your own employees and officers, or to those of a connected person
- The services solely comprise completing and submitting a tax return
- There are two main exceptions to the above:
 - Firstly, if the offshore advice and services (or referral) are only provided to your own employees and officers (including the partners of a partnership), or to those of a connected person, you are not an SRP
 - Secondly, offshore advice or services are excluded if those services solely comprise completing and submitting a tax return. The advice or service must be more substantial than just filling in the boxes in a return reflecting overseas income or assets

I am a SRP – what do I need to do?



Step 1 – identify the relevant clients

- You will first need to identify **specified clients**. These are clients that are:
 - Individuals, and
 - Clients as at **30 September 2016**
- Exceptions for certain clients
- You will first need to identify **specified clients**. These are clients that are:
 - Individuals, and
 - Clients as at 30 September 2016
- However, the notification obligation does **not** apply for a client if:
 - the SRP reasonably believes that the individual was not UK resident for income tax purposes for 2015/16, and will not be so resident for 2016/17;
 - on 30 September 2016 the SRP has no reasonable expectation of providing further advice or services to the individual;
 - despite maintaining proper records, the SRP holds insufficient information to be able to contact the specified client; or
 - The SRP is aware that a connected person, who is not an overseas person, has already made a notification to that specified client.
- Advisers should not exclude clients just because a disclosure (such as under the Liechtenstein Disclosure Facility) is ongoing.

I am a SRP – what do I need to do?



Step 2 – choose the approach to follow

- **Specific Approach;** or
 - **General approach**
-
- The client list can then be refined further.
 - SRPs can adopt either the **specific approach**, or the **general approach**.
 - Note that HMRC's guidance clarifies that SRPs "need only perform the due diligence under one of the options. If, on performing the due diligence, they find that they have no 'specified clients' to notify, they need not then move on to the other approach; they will simply send no notifications". (IEIM 602020)
 - The **specific approach** is designed to target notifications only to specific clients. This includes any clients that, in the year to 30 September 2016, the SRP has:
 - provided with offshore advice or services (or referred to an overseas connected party to provide such services) relating to their personal tax affairs; or
 - referred to a connected person outside of the UK for the provision of any such advice or services – even if no such services were provided to the client by the SRP or the overseas entity.
 - Clients can be excluded under the specific approach if the adviser has prepared and submitted a tax return under TMA 1970 section 8 (or expects to do so) for the individual client, disclosing the effect of the offshore advice or services (whether performed by the adviser or through referral to a connected person).
 - Determining whether overseas advice or services has been given to a client can often only be done by examination of the client's files, which could be extremely time-consuming.
 - Following representations about the large volume of files that may need to be reviewed, HMRC introduced the **general approach**.
 - Under the **general approach** the SRP must identify all individuals to whom they have provided any advice or services relating to their personal tax affairs in the year to 30 September 2016.
 - The SRP may then choose to exclude clients for whom the adviser has prepared and delivered a personal tax return under TMA 1970 section 8 (or expects to do so) in respect of the tax year to which the advice or services relate.
 - This may sound easier to comply with than the specific approach filter, but still seems to require the member to check through cases to ensure no advice was given in the period for a tax year for which the agent is not submitting a return.
 - Businesses, or divisions of the business, that reasonably believe that they will not have provided clients with any advice or services about their personal tax affairs in the year to 30 September 2016 can choose to exempt clients, groups of clients or business divisions.
 - This will be helpful to firms that may be able to leave out clients of certain departments, for example, it should enable firms that are principally legal advisers to exempt most of their client base, and only send to those dealt with by their tax specialists.
 - Similarly, where a tax advisory firm has a team or department that deals wholly with legal or other non-tax advice, they may exclude that client base.

I am a SRP – what do I need to do?



Step 3 – choose the method of notification

- Hard copy form, and can be given by hand or by post.
- Email
 - subject to certain provisos
- Notifications can be made in paper (ie hard copy) form, and can be given by hand or by post.
- Alternatively, the notification can be sent by email, **but**:
 - only where advice and services are mainly provided to the client by email; and
 - it is reasonable to believe that they would read the notification if it were sent by email.
 - HMRC’s guidance suggests that marketing emails (where the sender does not have evidence that the client habitually reads the content) are not sufficient to establish reasonable belief that the notification will be read.

What to send

- Two elements:
 1. HMRC branded document, and
 2. Standard wording in covering letter or email
- Covering message must also include the name of the client

Notification comprises two elements:

- an HMRC branded document, which is reproduced in full in the Regulations in Schedule 3, Part 1 and can be found at IEIM608040. This cannot be amended or annotated in any way.
- standard wording which must be included in the SRP's covering letter or email that accompanies the HMRC branded document. Again, this is set out in the Regulations in Schedule 3, Part 2, paragraph 3.

The covering message must also include the name of the client whether sent by letter or email.

HMRC's guidance at IEIM608000 onwards provides further information:

- the covering letter should be in the form of a letter from the business under its normal branding
- it should include the name and address of the customer and be written to them and if appropriate should be in the same format as normal correspondence with the customer.
- where the notification is sent by email, the email itself can be the covering letter and provide the required wording. The email will still need to include the name of the client
- If emailing the client, the HMRC branded document should be sent by email, rather than available from a hyperlink in the email or through a client portal
- There is no restriction on the remaining contents of the covering letter or email
- If you know that the client has special needs or does not speak English, then you should provide the notification in the format appropriate to allow the client to access and understand it, ie as you would normally make contact with that client

HMRC branded document



HM Revenue
& Customs

If you have money or other assets abroad, you could owe tax in the UK

Things are changing – the tax world is becoming more transparent

- HM Revenue and Customs (HMRC) is getting tougher on those not paying the right amount of tax across their offshore tax affairs.
- From 2016, HMRC is getting **new** financial information about our customers from more than 100 jurisdictions - including details about overseas accounts, structures, trusts, and investments.
- HMRC is already using information, supplied by overseas banks, insurers, and wealth and assets managers, to identify the minority who are not paying what they owe.

Are you confident that your UK tax affairs are up-to-date?

You need to regularly check that you have declared all of your UK tax liabilities and, if needed, bring your tax affairs up-to-date. This is your responsibility.

Personal circumstances change. For example, you may have recently inherited assets overseas. Tax laws change too. All of this means that previous advice can be out-of-date, with costly consequences.

- **If you are confident that your tax affairs are up-to-date and complete, then you don't need to do anything further.**
- If you are unsure, we recommend that you speak to a tax adviser to find out if you need to take action now.
- If you find that you need to bring your tax affairs up-to-date, it can be easier than you think. You can choose to do this now using HMRC's straightforward online disclosure facility at www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure

If you have not paid the right amount of tax and choose not to take action now, you need to know that:

- HMRC will find out about your money and assets overseas through **new** information from more than 100 jurisdictions.
- Penalties are increasing for those who are not paying the right amount of tax on their offshore assets, and you can even face criminal prosecution. Under new rules, you could face further penalties based on the value of the asset as well as the tax due, resulting in potentially life-changing consequences.

If you choose to delay in coming forward, it's very likely to cost you more and there is also more chance that HMRC will come for you.

Come to us before we come for you

Remember

- **If you are confident that your tax affairs are up-to-date, and you have declared all of your UK tax liabilities, then you don't need to do anything further.**

We are already using early financial information to identify the minority who are not paying what they owe.

If you need to bring your tax affairs up-to-date, it is your responsibility to do so - act now at

www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure

Notification content – standard paragraphs



Standard paragraphs for inclusion in the covering letter or email:

“From 2016, HM Revenue & Customs (HMRC) is getting an unprecedented amount of information about people’s overseas accounts, structures, trusts, and investments from more than 100 jurisdictions worldwide, thanks to agreements to increase global tax transparency. This gives HMRC unprecedented levels of information to check that, as in most cases, the right tax has been paid.”

“If you have already declared all of your past and present income or gains to HMRC, including from overseas, you do not need to worry. But if you are in any doubt, HMRC recommends that you read the factsheet attached to help you decide now what to do next.”

Practical Points



The view from practitioners

Are you exempt?

- Consider if your firm is exempt from the obligations
- The ‘tax return preparation exemption’
- If exempt merely document decision:
 - that you have considered the regulations; and
 - concluded that you consider your firm to be exempt, and why.
- Otherwise – watch the rest of webinar AND DO READ THE LEGISLATION

Preparation – leading the project



- Sole practitioner v larger firm:
- Who will lead the project?
- Centralise or leave to partners?
- Who signs it out – client partner or CEO?
- How will you know when project is complete?

Preparation – key steps

- Determine which rules to apply –SFI/SRP
- Consider which UK and overseas entities caught
- Consider which types of clients to send it to
- Develop a system to identify the clients across departments/divisions/entities
- Training, the ‘letter’ and sending it
- Make reasonable attempt
- Record what is done

Which rules apply

- Does the group include SFIs and SRPs?
- If both, SFI rules supersede
- Or can deal with independently
- Where client is client of >1 entity can send 1 letter or each write
- If excluded in 1 entity, not necessarily excluded from all entities

Which entities and departments?



- Consider which UK entities/departments are caught
- Can exclude departments where no tax advice (eg exclude audit/accounts entity)
- Offshore entities – include if controlled by UK SFI/SRP (not by other UK company)

Which approach?

- Which approach – specific or general?
- Specific:



x many

- General

Which clients?

- Select clients at 30/9/16 that are individuals
- Of these: all, all tax clients or sub-set?
- Sending a notification to **all** clients:
 - constitutes compliance
 - may save time, preserve goodwill
 - includes non-compliant
- Filtering the list as much as possible:
 - may preserve goodwill if omitting compliant clients
 - may omit non-compliant clients?
 - useful list for HMRC – are you a data holder?
- Sending a notification to **all** clients constitutes compliance with these obligations. This avoids having to select or 'single out' individual clients for a notification. This could save significant time and resources. It might help preserve client goodwill as you can say you are sending it to all clients.
- Filtering the list as much as possible may also preserve goodwill for those not written to and reduce queries from those sent notifications.

Identifying the clients

- Develop a client list for each entity/department (easy!?)
- Interrogate tax software/practice management systems to determine factors (residence after 31/1/17, NLA etc)
- ‘De-dupe’ the lists?

Contents of the communication

- Explain to clients that is a legal requirement
- Not implying clients have undisclosed income or gains
- Recommend clients engage tax investigations expert – not use HMRC’s online facility (unlike per HMRC’s branded document).
- Can send notification with other correspondence to that client

Can send notification with other correspondence to that client, so you could consider sending it out with other mass-mailings, such as tax return reminders or revised engagement letters, which could mitigate time and costs

The 'letter', sending it & training

- Letter or email (not portal)
- Send with other letters or separate – cost of postage?
- Timing of letter – staggering?
- Advising all partners and staff of:
 - what is being done
 - how to respond to client contact
 - assistance from investigations specialists

Internal records

- Record decisions taken at each stage
- Record which entities to send letters, how clients identified and why
- Retain lists of who letters sent to – eg if on a mail merge – or copies
- Gather initial client feedback, in case staff instructions need updating
- Consider having internal time code for PIR

Completion



- Have you made a reasonable attempt?
- If so, no penalties should be due

Advising clients that are SFI/SRPs

- Do you have clients that are SFIs or SRPs?
- Are you obliged to advise them?
- Invite them to engage you
- Engagement letter template?
- Engagement letter in place?
- Use early internal experience

Where to find out more



- December's Tax Adviser magazine features an in-depth article by Richard Wild, Head of the CIOT's Technical Team, about the client notification requirements and contains further practical tips
- HMRC's International Exchange of Information Manual – IEIM600000 onwards www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim600000
- Information including links to relevant documents on GOV.UK are also available on both the CIOT and ATT websites www.tax.org.uk/policy-technical/newsdesk/client-notification-obligations-hmrc-update and www.att.org.uk/technical/newsdesk/client-notification-obligations-hmrc-update

Questions



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