Client Notification Requirements and the Wider Tax Evasion Climate

CIOT/ATT member webinar – 1 December 2016

Questions and Answers (we have placed similar questions together)

If you are in any doubt about whether the obligations apply to you, we would recommend that you watch the webinar recording and read the regulations and HMRC's guidance to satisfy yourself whether you need to take any action or not.

You should also read the article in the December edition of Tax Adviser entitled "Action required". http://www.taxadvisermagazine.com/article/action-required

Exceptions from Specified Relevant Person (SRP) status:

There is an exception from SRP status where offshore advice or services are provided to an individual but those services solely comprise the preparation and delivery on behalf of the individual of returns and accounts, statements, and documents required under TMA 1970 section 8 (notice to file a personal tax return) *(Reg 12A(5)(a)(i))*

HMRC's guidance (IEIM 602010) expands on this as follows:

"*A relevant person will not be a specified relevant person if they only complete and submit a tax return that reflects the fact that the client has overseas income or assets. If the only advice or service of this kind that you offer is to fill in the boxes in the tax return reflecting overseas income or assets, by copying them from offshore bank accounts and P60s, then you are not within the obligation. The advice or services must be more substantial than just filling in a return".*

1. **What would be an example of doing more than completing and submitting a tax return since we are not permitted to give financial advice?**

   HMRC's guidance (above) explains what they consider to be within the 'tax return preparation' exception. It therefore only seems to apply to transposing numbers from source documents onto a tax return. If you do anything more than this, potentially work such as providing tax advice or computations, you are unlikely to fall within the exception.

   The notification requirements apply to 'relevant persons' 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

   The regulations then go on to define 'Specified Relevant Person', which is the category relevant to most CIOT and ATT members.

2. **What about calculating a gain on the sale of an asset which you will then include on a tax return? Is this considered to be advice?**

The calculation of a capital gain on the sale of an asset seems to go beyond simply filling out the boxes in the tax return.

3. **Are in-house teams caught?**
4. **What about in-house preparation of tax returns for partners in a law firm?**

There is an exemption from SRP status if the offshore advice and services (or referral) are only provided to the SRP's employees and officers (including the partners of a partnership), or to those of a connected person *(Reg 12A(5)(a)(ii) and (iii) and Reg 12A(5)(b)(i) and (ii))*

See HMRC's guidance (IEIM 604010) for further information.

5. **Can you please expand on which departments, e.g. in law firms, may be exempted?**

Where the general approach is used, 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. So a team that only deals with say corporate matters or conveyancing should be excluded. 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. (IEIM 602040)

Which clients do I need to send the notification to?

6. **What about partnerships (of individuals)? That is, do we need to write to clients who are partners?**

Yes, unless covered by an exclusion, the notification should be sent to current clients as at 30 September 2016 who are individuals (that is, natural persons rather than legal ones), so will include partners that are clients, although not the partnership itself. More specifically:

- For a Specified Financial Institution, where the account holder is an individual, rather than an entity *(Reg 12B)*
- For a Specified Relevant person, where the advice or services are in respect of an individual client's own personal tax affairs, rather than for an entity's tax affairs *(Reg 12C)*

7. **Are LLPs of individuals and of individuals and companies covered by the provisions?**

The notification obligation only applies to clients who are individuals, so it won't apply to clients which are LLPs, although it may apply to the individual members of the LLPs depending on the advice you have provided to them.

8. **Does the definition of client for notification include trustees and executors? Do you have to look through to the beneficiaries?**

The notification should only be sent to clients who are individuals where offshore advice and services have been provided in respect of their own personal tax affairs. As such, you do not have to send the notification to trustees or executors (in their capacity as trustees or executors).

With regard to beneficiaries who are individuals, it will depend on whether you have provided them with advice in respect of their own personal tax affairs or not.

9. What about clients who have died during the 2016/17 tax year?

Neither the regulations nor HMRC's guidance specifically refer to clients who have died. If we consider the regulations, it seems the position might be as follows:

If the client died before 30 September 2016, then they will not have been a client on 30 September 2016 (the date on which the client list must be drawn up). Therefore, you do not need to send them/their estate a letter.

If they died on or after 30 September 2016, they will have been a client on 30 September 2016. Under both the specific and general approaches you can exempt clients if on 30 September 2016 you have no reasonable expectation of providing further advice or services to the individual or if you cannot contact them. This could therefore apply if the client has died on or after 30 September 2016 as clearly any further advice regarding that client cannot be provided to the individual themselves.

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10. If we prepare partnership accounts but not personal tax returns, presumably we do not need to send it to partners?

Agreed, since in this case the advice or services are not in respect of the individuals' (partners') own personal tax affairs.

11. Is a UK resident "non dom" as at 30 September 2016 who uses the remittance basis excepted?

There is no special rule/exemption for UK resident "non doms" using the remittance basis. You will have to apply the same rules to them as to other individual clients to see whether you are required to send them a notification or not.

We would point out that UK resident non-doms are a category of clients who ought to be reviewing their UK tax affairs to ensure they are up to date and compliant before the end of the 'requirement to correct' period.

12. What about charities?

Charities are specifically excluded from the obligation – see Regulation 12A(3)(b). HMRC's explanatory notes to the Regulations provided the following information:

"*Some charities fall within the definition of financial institution, and for them an 'account holder' is the beneficiary of a charitable grant. In separate consultation with the charity sector it was soon apparent that they were not appropriate for inclusion. UK charities do not provide grants from overseas, so would not have provided an overseas account, and are highly unlikely to refer their beneficiaries for a financial account overseas".*

www.legislation.gov.uk/uksi/2016/899/pdfs/uksiem_20160899_en.pdf

13. Do we need to consider all limited companies and other organisations that we act for, as well as individual personal tax clients?

No, the notification should only be sent to current clients as at 30 September 2016 who are individuals (that is, natural persons rather than legal ones), or more specifically:

- For a Specified Financial Institution, where the account holder is an individual, rather than an entity *(Reg 12B)*
- For a Specified Relevant person, where the advice or services are in respect of an individual client's own personal tax affairs, rather than for an entity's tax affairs *(Reg 12C)*

14. Would it make sense to send the letter to all clients just in case they have not been honest in telling us about foreign income in the past and so we haven't given advice in the past so we would not ordinarily be required to send the letter to them?

Yes, this is an option. 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, and it will include any 'non-compliant' clients as well.

15. If you are aware of a third party preparing and submitting the client's personal tax return, is that enough to fall under the exception under the general route or are you excluded only if your firm submits the client's tax return?

No. An SRP can only exempt clients where the SRP itself, or another UK connected person such as a subsidiary, has prepared and delivered a personal tax return under TMA 1970 section 8 on behalf of the individual (or reasonably expect to do so). See Regulation 12D(2).

16. What is the position where you provide one-off advice under a separate letter of engagement to individuals and so they are not on-going clients?

There is an exemption for clients if on 30 September 2016 the SRP has no reasonable expectation of providing further advice or services to the individual. However, this filter should be approached with caution. Have you formally disengaged the client? What is the likelihood that they will come back to you for further advice in the future?

17. Are persons who attend introductory meetings, where advice will be given, but then decide to go elsewhere or prepare their own returns included?

See 15 & 16 above**.** If those persons are not engaged as clients, then no notification would be required. In any case specific advice should only be given under an engagement letter to engaged clients, as opposed to general guidance, which a non-client would normally be told they cannot rely on.

18. In common with lots of other firms we provide free initial meetings. The individual may then come back to us at a later date to assist with their tax affairs. This is particularly common, we have found, around the area of buy to let income, where the person may wish to find out in advance of buying somewhere what the obligations might be. Often they may decide not to buy a property, or they may complete their return themselves, but many do come back after a considerable period for us to prepare their returns or provide further advice on another matter. Am I correct to assume that these individuals are caught within the requirements?

See 15, 16 and 17 above.

19. Do we need to send the notification letter to a client that we no longer act for?

The notification obligation does **not** apply for a client if on 30 September 2016 the SRP has no reasonable expectation of providing further advice or services to the individual. If you have formally disengaged the client, because there is no reasonable expectation that you will do any further work for them, or if you are unable to contact them due to not having up to date contact details, there is no need to send them a notification.

20. What do we do for clients who became clients after 30 September 2016?

The notification applies to current clients as at 30 September 2016, so there is no requirement to send it to clients who became clients after that date. However, there is nothing to stop you sending it to new clients engaged after that date.

21. How will this apply for advice given after 30 September 2016? Is there an ongoing requirement?

The notification obligation is a one-off exercise that only applies for advice and services provided to relevant individual clients in the year to 30 September 2016. However, there is nothing to stop you sending it to new clients engaged after that date.

Offshore advice and services

22. Does "overseas tax advice" include a general description of, e.g. remittance basis?

It is difficult to give a precise answer as it will depend on exactly what advice you provided to the specific client.

'Offshore advice or services' is defined in Reg 12A(2) and means advice or services relating to;

a. A financial account;

b. A source of relevant foreign income;

c. A source of employment income; or

d. 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 the Common Reporting Standard, and is one of the 101 signatories to Schedule 1 to the International Tax Compliance Regulations 2015).

Further guidance can be found at IEIM 603000.

If a client has asked, for example, for an explanation of the remittance basis, it would be reasonable to conclude that the client has overseas income or assets and, in any event, it would be worthwhile providing them with the notification.

23. I have a new client now resident in the UK, who lived in Spain/Portugal for 12 years. We've discussed his UK business, including UK VAT registration. Do I need to send him a notification letter?

This advice is unlikely to fall within the definition of offshore advice or services (see 22 above). Whether you need to send him a letter will depend on what 'approach' you take.

24. I don't provide offshore advice to any client who lives abroad, except to say you may have a requirement to comply with the tax laws of the country in which you are resident. Do I have to send these people a letter?

If that is all the advice you provide, then it is unlikely to fall within the definition of offshore advice or services (see 22 above), although it would be easy to trip into this if any other comments are made, including any discussion of the UK tax implications of offshore assets of income.

25. Are there any implications for VAT practitioners?

The obligations apply where a tax adviser provides 'offshore advice or services in the course of a business'. 'Offshore advice or services' is defined in Regulation 12A (2) (see 20 above) and broadly covers income and gains within the charge to income tax and CGT. It's unlikely therefore that the client notification requirements will apply if you provide advice or services relating only to VAT.

Content and Delivery of the notification

26. What is the deadline for sending such communications to clients?

31 August 2017.

27. If you post or hand deliver a letter how can you later prove the client received it? The client may well have binned it and can't recall receiving it, if HMRC asks.

The key here is that you should keep good internal records, ie

Record decisions taken at each stage
Record which entities will send letters, how clients are identified and why
Retain lists of who you sent the letters to – eg if on a mail merge – or copies
Record the date sent and how sent

28. Is there any reason as why to you can't send this communication through a portal?

We think HMRC's reasoning here is that this may not be enough to establish reasonable belief that the notification will be read.

There is further guidance expanding on the content and method of the notification at IEIM 608000.

29. Where the letter is sent to clients but the specific wording has not been fully reproduced in the covering letter or e-mail (even though it is also in HMRC's letter), should the e-mails & letter be re-sent?

The regulations and guidance (IEIM 608050) are clear that there are certain standard phrases that must be included in the covering letter/email (Part 2, Schedule 3, International Tax Compliance (Customer Notification) Regulations 2016), so to ensure you are fully compliant you should resend them.

30. Will the ATT & CIOT be producing a recommended standard letter for use by members in practice to send to their clients about the Common Reporting Standard, the penalties for offshore tax evasion and the opportunities to disclose offshore evasion to HMRC via the new Worldwide Disclosure Facility?

Currently there are no plans to produce a standard letter for use by members. Any standard letter would typically need substantial editing, to reflect the nature of the particular adviser / client relationship, before it could be sent out. We do not think that a 'one size fits all' letter is suitable in these circumstances.

Penalties and Compliance

31. What are the potential penalties for non-compliance?

Please refer to HMRC's guidance IEIM 609000 onwards. There is a fixed penalty of £3,000. Non-compliance might also constitute a breach of the CIOT and ATT's Professional Rules.

32. Will HMRC be checking a selection of practices for full compliance?

Yes, we understand that HMRC may check a selection of practices for compliance with these regulations. In particular, if a client has to make a later disclosure HMRC may wish to find out if a client notification letter was sent.