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What price privacy?

In the next few months, financial information that was once private is to be made public or shared with tax authorities around the world. But at what cost?

In years to come we may look back at the publication of the Panama Papers as a defining moment in the relationship between law enforcement, tax authorities and citizens. Since 3 April 2016, there have been a significant number of national and international initiatives prompted by the information on Mossack Fonseca's clients and professional contacts that fell into the public domain.

At an international level these initiatives have included:

- major revisions to the 4th EU Anti Money Laundering (AML) Directive
- JITSIC (OECD) project on information sharing and international collaboration
- EU Consultation on disincentives for advisers for potentially aggressive tax planning schemes.

In the UK, recent initiatives include:

- an investigation into the effectiveness of AML regulations
- the creation of a register of trusts with tax consequences
- disclosure notices served on targeted trust and company service providers (TCSP)
- HM Revenue & Customs (HMRC) investigations into individuals and professional advisers implicated in the Panama papers.

In 2017 we will see the first reports submitted under Common Reporting Standards (CRS), following on from earlier agreements covering the USA (FATCA) and the Crown Dependencies and Overseas Territories (CDOT). In 2018, MIFID II will come into force under which legal entities, including trusts, will be required to obtain Legal Entity Identifiers (LEI) in order to enter into investment transactions.

Blurred lines

While moves to share financial and other information are aimed at the prevention of tax evasion, money laundering and illicit finance, concern is growing at the erosion of privacy. In the same way that there has been a deliberate misrepresentation of the difference between tax evasion, tax avoidance and tax planning, the distinction between deliberate concealment, secrecy and privacy has also become confused.

Although in the forefront of jurisdictions that will make information on the beneficial ownership of companies publicly accessible, the stance of the UK Government is to keep ownership of trusts private via a register to be maintained by HMRC rather than Companies House. The information it contains will be available to law enforcement agencies. Meanwhile, the French Constitutional Court has annulled the recent law creating public registers of trusts, which had been created from wealth tax returns. It is yet to be seen what effect this will have upon similar EU proposals.

For a more in-depth look at these issues, please email info@nexia.com.

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January 2017

Transfer pricing crackdown: the Singapore perspective

As Singapore aligns itself with the global trend towards increased reporting

requirements, the country is attempting to maintain a fine balance between its 'light touch' attitude towards transfer pricing reporting while keeping tax administration simple for the average taxpayer.

Singapore recently announced new reporting measures that will take effect in the 2018 tax year. Taxpayers will be required to report certain details of related party transactions (RPT) where the value of RPT in the audited accounts for the financial year exceeds S$15m (approximately US$10.5m). Multinationals will need to submit the 'Form for Reporting Related Party Transactions' together with their corporate income tax return, also known as 'Form C'. The value of RPT is the sum of all RPT items in the income statement and the year-end balances of loans and non-trade amounts.

This marks a subtle shift from the Inland Revenue Authority of Singapore's (IRAS) stance of maintaining a relatively light touch approach towards transfer pricing reporting which aims to enforce arm's length principles without placing a disproportionate burden on taxpayers at large. Indeed, it signifies that the IRAS is aligning itself with the growing trend of greater scrutiny and heightened reporting requirements among an increasing number of countries on the transfer pricing front. In countries such as Malaysia and India, transfer pricing reporting for related party transactions is an integral part of their overall corporate tax filing regime.

BEPS

This latest move from Singapore around transfer pricing follows on from its move last year to join the OECD-backed base erosion and profit shifting (BEPS) project. Singapore committed to adopting four minimum standards of the 15-point action plan under the BEPS project, as follows.

Action 5: Countering harmful tax practices
Under this action point, which focuses on concerns around preferential regimes, Singapore is committed to using its tax incentive framework in a judicious manner in line with rewarding economically substantive activities without risking its use as a means to facilitate artificial profit shifting.

Action 6: Preventing treaty abuse
Singapore is actively working with other countries to develop a multilateral instrument which will incorporate anti-abuse measures such as 'limitation of benefits' clauses for inclusion in its tax treaties.

Action 13: Transfer pricing documentation – country-by-country reporting
Singapore has committed to implementing Country-by-Country (CbC) reporting for financial years beginning on or after 1 January 2017 for multinational enterprises (MNEs) whose ultimate parent entities are in Singapore and whose group turnover exceeds S$1.125bn. These entities are required to file CbC reports within 12 months from the last day of their financial year. The CbC reports will be automatically exchanged with tax authorities of other jurisdictions that have entered into bilateral agreements with Singapore.

Action 14: Enhancing dispute resolution
Singapore is committed to working closely with other countries on the establishment of robust dispute resolution mechanisms in line with the BEPS project, to ensure taxpayers have access to such mechanisms under the bilateral treaty framework.

A balancing act

Singapore has tried to maintain a balance between enforcing global transfer pricing rules while keeping its tax administration relatively simple without unduly burdening the average taxpayer. The global scrutiny on transfer pricing and the increased reporting requirements being implemented by countries around the world undoubtedly makes the light touch approach harder to achieve. But many taxpayers in Singapore hope IRAS will continue with its pragmatic attitude towards retaining that fine balance.

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New reporting regulations for US parent companies

The US application of OECD country-by-country reporting requirements.

On 5 October 2015, the OECD issued final recommendations for combating aggressive tax planning and increasing tax disclosure in its Base Erosion and Profits Shifting 2015 Final Report. Action 13 of the report encourages OECD member countries to adopt country-by-country (CbC) reporting standards for collecting and sharing information on income, activities, and taxes paid by multinational companies conducting business within their country. In response to the OECD mandate, the US Treasury and Internal Revenue Service (IRS) issued final regulations for CbC reporting effective for tax years beginning on or after 30 June 2016.

Filing Form 8975

Under these regulations, a US entity, which is the ultimate parent entity of a multinational enterprise group with revenue for the preceding annual accounting period of US$850m or more, must file a CbC report with the IRS using Form 8975*.* Form 8975 must be filed with the ultimate parent entity's income tax return on or before the due date, including extensions. Form 8975 and the accompanying instructions are still under development.

Once finalized, Form 8975 is expected to require affected US parent companies to disclose the following items with respect to their constituent (greater than 50% owned) entities:

- complete legal name
- tax jurisdiction of residence
- tax jurisdiction of organization

- tax identification number
- main business activities.

In addition, US parent companies are likely to need to disclose, on an aggregate basis, the following items for each tax jurisdiction in which one or more constituent entities have a tax residence:

1) Revenues generated from transactions with constituent and non-constituent entities
2) Profit or loss before income tax
3) Total income tax paid on a cash basis to all tax jurisdictions, and any taxes withheld on payments received by the constituent entities
4) Total accrued tax expense recorded on taxable profits or losses
5) Stated capital
6) Total accumulated earnings
7) Total number of full-time employees
8) Net book value of tangible assets

Failure to comply with CbC disclosure requirements may result in substantial penalties.

A US entity that is the ultimate parent entity of a multinational enterprise group may be affected by these regulations, and should assess the need to update internal financial reporting processes, and consider how CbC disclosures will be interpreted by the IRS. Companies affected by these regulations may need assistance with developing Form 8975 reporting templates and analyzing metrics to evaluate areas at risk of tax audit.

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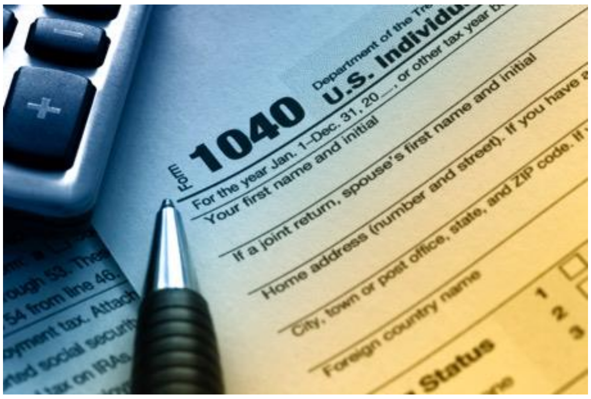
January 2017

Take advantage of US tax amnesty programs while you can

For US taxpayers who haven't reported overseas bank accounts: it's time to reconsider.



With every new presidential administration, there's always a degree of uncertainty around possible changes to tax laws. And the amnesty programs offered to U.S. taxpayers with foreign bank accounts are no exception.

With the Internal Revenue Service (IRS) receiving increasing amounts of information about foreign accounts, taxpayers looking to take advantage of these programs should act quickly. There are drastic penalties for non-compliance with foreign financial reporting requirements and the existing amnesty programs could change or close at any moment.

Time may be running out for you to make a voluntary disclosure about non-U.S. assets and income, and benefit from existing IRS programs that may reduce or eliminate the penalties you otherwise may owe.

Since 2009, the IRS has made the non-reporting of foreign financial accounts a priority in its tax enforcement efforts. Due in part to the severe penalties that the IRS may charge for the failure to report these accounts, the IRS has been successful in encouraging taxpayers to come forward voluntarily through a series of partial amnesty programs rather than chasing down each individual non-filer. During this time the IRS has collected over US$10bn in tax, interest and penalties from more than 100,000 taxpayers through these programs.

Amnesty programs

The OVDP and Streamlined Filing Compliance Procedures allow taxpayers who have not reported all of their foreign financial assets and income to the IRS to do so voluntarily for prior years before the IRS is aware of their non-compliance. Under the OVDP, taxpayers must generally file eight years of delinquent or amended tax returns and eight years of Foreign Bank Account Reports (FBARs), in addition to various other forms required by the IRS. They then pay the taxes, interest and penalties due, including a penalty of 27.5% or 50% of the unreported account balances. The Streamlined Procedures, which have more restrictive eligibility requirements, including that the non-compliance was not "willful", generally require three years of tax returns and six years of FBARs, and include a penalty of 0% or 5%.

Filing through these programs allows certain taxpayers to reduce, or, in some cases eliminate, the penalties that might otherwise be charged for failing to file tax returns, FBARs, and other foreign information returns. If the IRS discovers a failure to file an FBAR, the penalty could be up to the greater of 50% of the account balance or US$100,000 per violation. Other forms carry a US$10,000 penalty per violation. Although the programs may still result in substantial penalties, they are often better than when a taxpayer is caught by the IRS.

Under these amnesty programs, the taxpayer must make a voluntary disclosure before the IRS knows about the non-compliance. The IRS has several ways of finding out about undisclosed foreign financial accounts, including whistleblowers, reporting under Foreign Account Tax Compliance Act (FATCA), through tax information exchange agreements and from various IRS voluntary disclosure programs.

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Demonetisation in India

The Indian Government ramps up its tactics for curbing corruption and black money.

As part of his war against corruption, black money, money laundering, terrorism financing and counterfeit banknotes, India's Prime Minister Narendra Modi announced on 8 November 2016 the demonetisation of INR 500 and INR 1,000 notes (worth approximately USD 7 and USD 14) within the country. These large denomination banknotes comprise 86% of the cash within the economy and led to substantial panic as nearly 90% of the country's transactions are cash-based.

The banning of these notes earned its fair share of praise and criticism. Critics have strongly opposed the planning and implementation and are sceptical of the impact that it may have on the average person. Others, however, are optimistic that its impact on Indian business will be positive in the long run. Given that the country ranks 76th on Transparency International's Corruption Perception Index, it was a welcome move towards curbing corruption and black money in the economy.

Amnesty period

The Government asked people holding old 500 and 1,000 notes to exchange/deposit them at banks between 24 November and 30 December 2016. If deposited, people were expected to show the source of the cash, or else be liable to tax and penalties. However, it was found that under the existing tax law, the provisions of the penalty would fail if an individual declared the cash as income from the current year. To plug this gap, the Government announced a new tax amnesty scheme providing for a higher tax rate (including penalty) than the standard tax rate on declarations of unaccounted cash deposited in banks. The Government has also made provisions for greater penalties for tax evaders.

Although members of the public faced some difficulties with smaller transactions and faced long queues to exchange banknotes, the overall reception has been positive and most people praised the move.

Part of the masterplan

This is all part of the Government's move towards simplifying the tax system, increasing transparency and reducing discretionary powers of the authorities. All payments of more than INR 5,000 made by Government bodies to vendors must now be made via a digital platform. The Government has also formed a committee to suggest ways of making India a cashless economy and move towards a digital economy.

Many economists believe that there will be a dip in the country's Gross Domestic Product (GDP) over the next two quarters due to the recent demonetisation. It is hoped that the Government's push towards a digital economy through cashless online processes will result in reduced corruption and help create a more level playing field. More importantly, these online processes should reduce bureaucracy and make it easier to do business in India. We can expect to see the effects of these changes in the next one to two years.

In the long run, we expect that all of these measures will increase transparency, reduce corruption and make India an even more attractive investment destination.

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New India-Cyprus tax treaty set to improve relations

The classification of Cyprus as a notified jurisdiction will be withdrawn retrospectively from November 2013.

In 2011, in its fight against the use of overseas tax havens and the 'round-tripping' of money, the Indian Government enacted a provision alllowing it to notify a country or a territory as a notified jurisictional area' (NJA) where the country or territory was not effectively exchanging information with India. A catastrophic 30% withholding tax is imposed on taxpayers located in an NJA – irrespective of whether a double taxation avoidance agreement (DTAA) exists between the jurisdiction and India.

New agreement between India and Cyprus

On 1 November 2013, Cyprus became the first and only NJA after the Indian Government cited non-cooperation regarding the sharing of tax information. Following discussions between the Cyprus Ministry of Finance and the Indian Government, on 18 November 2016, the two countries agreed a revised DTAA replacing the previous version from 1994. The classification of Cyprus as a NJA was rescinded retrospectively as of 1 November 2013.

The new agreement provides for assistance between the two countries for the collection of taxes. It also updates the provisions related to the exchange of information to accepted international standards, expands the scope of permanent establishment and reduces the tax rate on royalties in line with the tax rate under Indian tax laws. It also updates the text of other provisions in accordance with international standards and India's tax treaties.

The agreement further incorporates source-based taxation for capital gains from alienation (disposal) of shares. In other words, India shall have the right to tax capital gains arising on Cyprus tax residents on the transfer of shares of an Indian company and the grandfathering of investments undertaken before 1 April 2017. Disposal of such shares at any future date would continue to be taxed in the country of residence.

Provisions under the new DTAA will come into force following the completion of necessary internal procedures in both countries. It is expected to come into effect in India in respect of income derived in fiscal years beginning on or after 1 April 2017.

Upgrading and expanding the network of double tax conventions is of high economic and political importance and aims to further strengthen and attract foreign investment in Cyprus. It is a significant development and will contribute towards further developing the trade and economic links between India and Cyprus.

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January 2017

Cypriot citizenship through investment

The Government of Cyprus revises citizenship criteria for entrepreneurs and investors.

Cyprus offers many benefits to foreign investors and their families looking for citizenship in a jurisdiction with financial stability, a gateway to Europe and a high standard of living.

Investment criteria

In an effort to further encourage foreign investment and attract high net worth individuals into doing business in Cyprus, the Government has recently reduced the total investment requirement for Cypriot citizenship to €2m.

A non-Cypriot citizen can apply for Cypriot citizenship, provided that the €2m is invested in at least one or a combination of the following three types of investment:

1) Alternative Investment Funds (AIFs) or financial assets of Cypriot companies or Cypriot organisations licensed by the Cyprus Securities and Exchange Commission
2) Real estate, land development and infrastructure projects
3) Purchase, establishment or participation in Cypriot businesses or companies

It is also worth noting that a high-ranking senior manager may apply for Cypriot citizenship, provided that he or she receives remuneration that generates tax revenue of at least €100,000 over a three-year-period and that this tax is prepaid. Furthermore, the company, which the high-ranking senior manager works for, must fulfil one of the above-mentioned investment criteria.

Additional requirements

In addition to satisfying the above investment criteria, the applicant must also meet the following conditions to secure citizenship:

- own a permanent residence in Cyprus worth at least €500,000 excluding VAT. This condition does not apply if the investment is in residential property, under criterion 2 above
- neither the applicant nor his or her spouse, adult children or parents can have a criminal record
- before acquiring Cypriot citizenship, all adult applicants must be residence permit holders.

The investor's parents can also apply for citizenship following the purchase of a permanent residence worth at least €500,000.

The applicant must make the required investment during the three years preceding the date of application, and should ensure that the investment is retained for at least three years from the date of acquiring citizenship.

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News round-up

Proposed corporation tax on non-resident companies' UK income

Changes to how non-UK resident companies are taxed on UK source income could have a significant impact on foreign investors into UK property.

In its Autumn Statement on 23 November, the UK Government announced a proposal to review how non-UK resident companies are taxed on UK source income. The proposals would have a potentially significant impact on non-UK companies that hold UK rental properties.

Currently, a non-UK company which owns a UK rental property pays basic rate income tax on the annual net rental profits (the rate of tax payable is 20%). In calculating the net rental profit, a tax deduction is allowed for interest paid by the company on loans to purchase the property (assuming the interest is on arm's length terms). Also, brought forward tax losses of the UK rental business can be offset against current year rental profits without restriction.

What is likely to change?

The proposal announced in the Autumn Statement was to potentially bring the net rental profits of non-UK resident companies within the charge to UK corporation tax. No details have been announced as yet and the Government has stated that it will consult at Budget 2017. The consultation will consider how to apply corporation tax rules, in particular rules which restrict the deductibility of interest expense and restrictions on the use of losses.

The UK Budget 2016 announced proposals to restrict the deductibility of interest and fundamental changes to the rules in relation to offsetting brought forward tax losses. These rules, if enacted, could potentially be applied to non-UK companies in receipt of UK rental income.

What could the changes mean in practice?

On the face of it, bringing non-UK resident companies within scope of UK corporation tax is a positive proposal from the perspective of the taxpayer as the rate of corporation tax is set to fall from April 2017 (eventually down to 17% by April 2020). As noted above, such companies currently pay 20% basic rate income tax. However, the benefit of the falling tax rate may, depending on the circumstances of a particular company, be more than offset by restrictions on interest deductibility and relief for tax losses.

Interested parties should monitor this situation closely. Directors of companies holding UK property which are highly geared or have brought forward tax losses should consider how these proposals will impact on the company as further action may be required, for example to restructure how a company is financed.

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Italy: the new flat rate tax regime on foreign income

Italy has introduced a new tax regime aimed at encouraging non-resident high net worth individuals to move their fiscal residence to the country.

The new rules mean that Italian-source income is taxed as usual, while foreign income and gains are sheltered from Italian tax, subject to the taxpayer paying a flat rate charge of €100,000 each calendar year. It can also be extended to family members, at a cost of €25,000 per member. This flat tax replaces any personal income tax normally due on foreign income.

To be eligible for this non-domiciled tax status, the individual must:

- transfer their place of residence to Italy
- not have been resident in Italy in the last nine years out of the previous ten preceding their relocation to Italy
- apply for and receive a favourable ruling from the tax authorities, and submit their annual personal income tax return for their first tax year as an Italian tax resident.

This privileged tax status is available for up to 15 years, unless the individual misses any tax payments. It is important to point out that there are some foreign countries to which these rules will not apply.

The annual charge also exempts individuals from the usual requirement to disclose foreign investments in their tax return. Furthermore, inheritance and gift tax will be due only on assets located in Italy.

The annual charge must be paid in a single installment. It does not give any credit for taxes paid overseas on non-Italian source income.

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Clarification around corporate criminal responsibility in Spain

An effective compliance plan is vital for corporations and their administrators if they are to avoid criminal responsibility in the event of a crime.

In 2010, Spain reformed its criminal code so that Spanish corporations are now held responsible for crimes committed on behalf of and for their benefit by administrators, managers or employees. Criminal responsibility previously fell upon the person who had committed the crime, but under the reforms administrators are held personally liable for a criminal offence, regardless of whether they had any part in it.

The reformed code said that if a corporation had an effective system in place for preventing and detecting offences, then criminal responsibility was reduced for the corporation and its administrators. But the terms were somewhat vague and difficult to apply.

Effective compliance plan
In 2015 an amendment to the criminal code clarified the position: if the corporation has an approved and effective compliance plan in place before an offence occurs, then the responsibility of corporations and their administrators is reduced or eliminated.

The state's attorney has now issued an official notification with specific instructions for assessing the effectiveness of compliance plans so that they exonerate the corporation and its administrators from any criminal responsibility in the event of a criminal act.

Now that the rules are clearer it is important for Spanish corporations and their administrators to implement a compliance system that meets the requirements under this notification and which is suited to the size and characteristics of the corporation.

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More changes afoot for UK non-doms

Key developments on the taxation changes affecting UK resident non-UK domiciled individuals from 6 April 2017.

A number of helpful changes were announced on 5 December 2016 including an extension from one tax year to two of the period for segregating non-doms' offshore bank accounts containing capital, gains and income into separate accounts to enable tax efficient remittances to the UK. Less helpfully, where gains on assets are subject to income tax are held it will no longer possible for them to be rebased from 6 April 2017.

Liability to income tax and CGT will arise only to the extent that benefits are received from an offshore trust. Any payments made to a close family member from April 2017 that is matched to existing income or gains of the trust will be taxed on the settlor unless the recipient is taxed personally.

It will no longer be possible to 'wash out' capital gains from offshore trusts after 6 April 2017 by making payments to non-UK resident beneficiaries, except in the year that a trust is wound up. 'Recycling' rules will prevent a non-UK resident beneficiary from receiving a benefit from the trust and then giving or lending it to a UK-resident beneficiary within the following three years.

From 6 April 2017, shares in non-UK companies will be subject to inheritance tax (IHT) charges to the extent that their value derives from UK residential property. While all debts will be allowed as a deduction on a pro rata basis, the loans – or any collateral or security for them – may be within the scope of IHT in the hands of the lender.

There will also be some helpful changes to encourage the take-up of Business Investment Relief.

Individuals and trustees should consider the implications and what their next steps should be as, for some non-doms, these are the most significant changes in UK taxation since the current rules were introduced in 2008.

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