



Summer Tax Update

Claremont Hotel

28 June 2018



Agenda

Tax Investigations

Robert Rotherham

Country by Country Reporting

Georgia Kenyon

IOM Tax avoidance: Budget 2018 changes

David Parsons

VAT Update

Paul Cawley

CRS
UK Property Tax

Clare Kelly

EU Substance update

David Parsons



Tax investigations

Robert Rotherham

Background

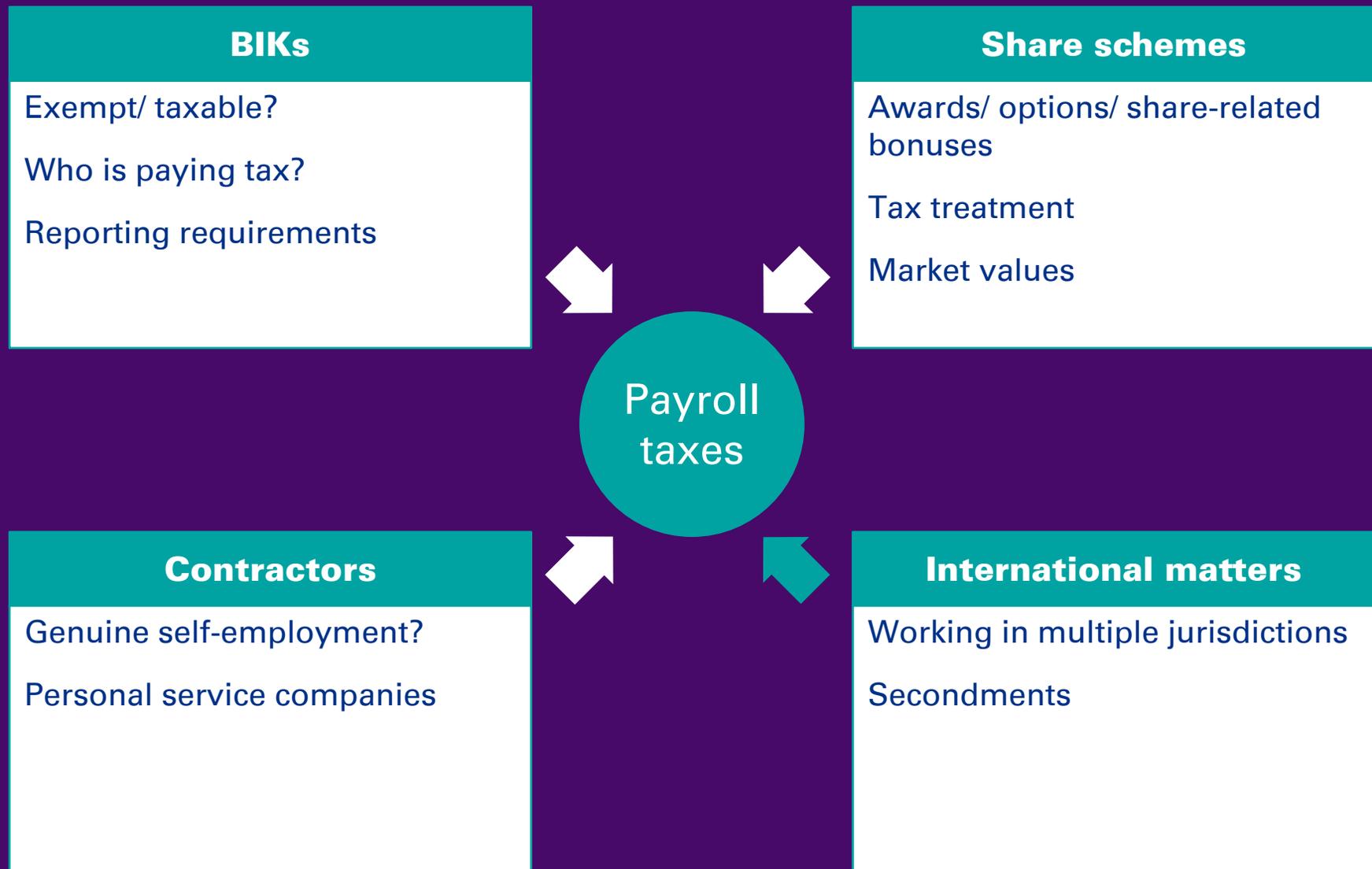
- General increase in revenue authority activity
 - Budgetary pressures
 - Political pressures
 - Public/ media influence
- Information increasingly available
 - FATCA/ CRS/ AEOI
 - BEPS, e.g. CbCR
- More targeted/ sophisticated approach?
 - Sectors
 - Systemised



The wider context...



Income Tax Division activity



HMRC activity

- High Net Worth Unit
 - NW >£20m
- Non-resident landlords
 - TP/ interest deductibility
 - Loan arrangement fees
- Corporate enquiries
- Offshore Property Developers Task Force



Corporate enquiries

Residence

Central management and control

Board meetings – content/ location

UK influences – directors/ UBOs?

Permanent establishment/ DPT

Fixed place of business

Dependent agent concluding contracts

DPT – “avoided” PEs

Deductibility of expenses

Finance costs

Capital allowances

Transfer pricing

Other issues

Use of losses

WHT

Offshore Property Developers Task Force

- UK property development income subject to CT/ IT even where no PE (w.e.f. 5 July 2016)
- OPDTF ostensibly set up to police compliance with these new rules; however, they are equally, if not more interested in investigating companies under the “old” rules
- Corporate residence
- PE – construction site?
- DPT
- TP
- Penalties/ interest
- But also:
 - VAT
 - Employment taxes
 - CIS
 - SDLT
- Currently looking at the biggest 50 or so cases, no doubt more to follow.



Requirement to correct (cont.)

- Requires taxpayers who have **outstanding offshore tax non-compliance as at 5 April 2017** to correct the position on or before **30 September 2018**.

The **tax non-compliance** must:

Involve an offshore matter or offshore transfer

Involve Income Tax, Capital Gains Tax or Inheritance Tax

Have been committed on or before 5 April 2017

- **What to correct?**

Depends on behaviour which determines periods assessable and penalties. Could be 4/6/20 years

Four year extension for HMRC to assess tax assessable at 6 April 2017 (to 5 April 2021)



Failure to Correct (FTC)



Significant new set of sanctions for **'Failure to Correct' (FTC):**

Penalties 200% (can be lowered but **no lower than 100%**),

A 50% additional penalty for seeking to avoid RTC

In addition, for serious cases

Up to a 10% asset based penalty on relevant asset (cases over £25,000 tax in a year),

'Naming and shaming' (cases over £25,000 tax across all years)

Only defence to FTC is someone had a reasonable excuse not to correct





Country by Country Reporting

Georgia Kenyon

BEPS and CbCR Overview

- The BEPS Project is led by the OECD and has 15 separate work streams to tackle tax avoidance strategies that exploit mismatches in tax rules to shift profits to no tax/ low tax jurisdictions.
- Action 13: Transfer Pricing Documentation and Country-by-Country Reporting is one of four BEPS minimum standards and requires groups, meeting certain conditions, to report specific data on their international operations annually to their tax authority.
- Tax authorities will automatically exchange the CbCR information to countries in which the group operates (providing there is an appropriate international agreement to exchange such information).



Overview of CbCR Regulations

- The Income Tax (Country-by-Country) Regulations 2017 (the “CbCR Regulations”) apply to accounting periods commencing on or after 1 January 2017.
- The CbCR Regulations apply to MNE’s with consolidated group revenue of EUR 750 million or more.
- If the threshold is met, then the MNE Group is required to submit a CbCR report.
- Penalties for non-compliance and inaccurate information.



Competent Authority Agreements

- The automatic exchange of CbC reports is subject to agreements between competent authorities.
- There are two forms of Qualifying Competent Authority Agreement (“QCAA”):
 - the Multilateral Competent Authority Agreement (“MCAA”); and
 - a Bilateral Competent Authority Agreement (“BCAA”) – as of 5 April 2018, there are over 2,700 activated BCAA’s.



Isle of Man Constituent Entity Requirements

If it is determined that an Isle of Man company is a CE, but not a Reporting Entity, it will be required to notify the ITD of the following:

1. the name of the Reporting Entity; and
2. the jurisdiction of tax residence of the Reporting Entity.

Groups

[View Return Guide](#)

Was the company a member of a group during the period? Yes No

If yes, what percentage of the company's shares was owned by the group?

Is/Was the company the ultimate parent company? Yes No

Is the company a constituent entity of an MNE group for CbCR? Yes No

If YES, please state the name and tax residence of the reporting entity

Name

Jurisdiction of Tax Residence

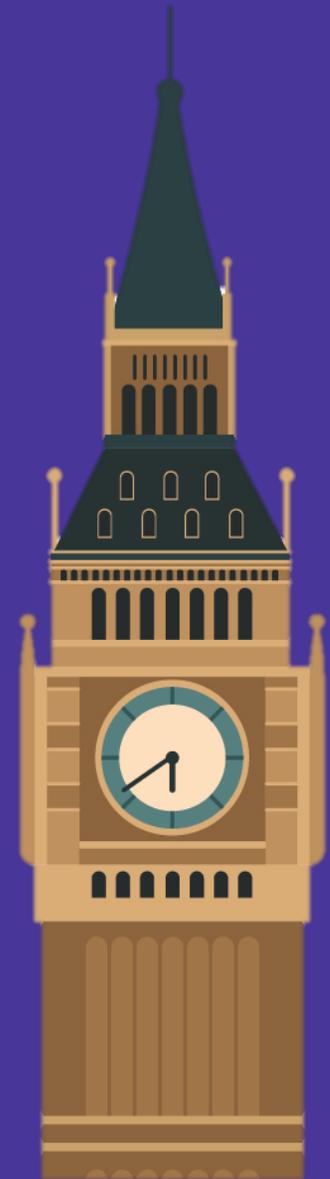
Alpha Limited

Facts

- Isle of Man company with a 31 December 2017 year end.
- A CE of an MNE group (all companies are in jurisdictions in which CbCR applies to fiscal periods commencing on or after 1 January 2017).
- UPE is resident in the UK (a CbCR jurisdiction).

CbCR requirements

- Alpha Limited will be required to notify the ITD of (1) the name of its reporting entity, and (2) that the reporting entity is resident in the UK.
- This notification is made by completing the relevant section on the company's income tax return (to be submitted no later than 1 January 2019).



Isle of Man Reporting Entity Requirements

— An Isle of Man Reporting Entity will be required to report on the group’s international operations to the ITD annually.

— Notification no later than 6 months following the last day of the first “reporting fiscal year”.

— CbC report must be filed 12 months and a day following the last day of the “reporting fiscal year”.

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

Name of the MNE group: Fiscal year concerned: Currency:										
Tax Jurisdiction	Revenues			Profit (Loss) Before Income Tax	Income Tax Paid (on cash basis)	Income Tax Accrued – Current Year	Stated capital	Accumulated earnings	Number of Employees	Tangible Assets other than Cash and Cash Equivalents
	Unrelated Party	Related Party	Total							

Table 2. List of all the Constituents Entities of the MNE Group included in each aggregation per tax jurisdiction

Name of the MNE group: Fiscal year concerned:																		
Tax Jurisdiction	Constituent Entities resident in the Tax Jurisdiction	Tax Jurisdiction of organisation or incorporation if different from Tax Jurisdiction of Residence	Main business activity(ies)															
			Research and Development	Holding/managing intellectual property	Purchasing or Procurement	Manufacturing or Production	Sales, Marketing or Distribution	Administrative, Management or Support Services	Provision of services to unrelated parties	Internal Group Finance	Regulated Financial Services	Insurance	Holding shares or other equity instruments	Dormant	Other ²			
	1.																	
	2.																	
	3.																	
	2.																	
	3.																	

Beta Limited

Facts

- Isle of Man company with a 31 December 2017 year end, it is the UPE of a group (all in jurisdictions in which CbCR applies to fiscal periods commencing on or after 1 January 2017).
- Beta Limited's consolidated accounts for the year ended 31 December 2017 show consolidated revenues of EUR 800 million.

CbCR requirements

- Beta Limited will be the MNE group's reporting entity and as such will be required to notify the ITD by completing the registration form on the Online Information Provider Service (6 months following the last day of the first "reporting fiscal period", i.e. 30 June 2018).
- Following this, Beta Limited must file the CbC report, no later than 1 January 2019.



Gamma Limited

Facts

- Isle of Man company with a 31 December 2017 year end and is a CE of an MNE group (all in jurisdictions in which CbCR applies to fiscal periods commencing on or after 1 January 2017).
- Gamma Limited's UPE is resident in Utopia (a non-CbCR jurisdiction).

CbCR requirements

- Utopia does not require companies to file CbC reports, as such Gamma Limited will be the MNE group's reporting entity and will be required to notify the ITD by completing the registration form on the Online Information Provider Service (6 months following the last day of the first "reporting fiscal period", i.e. 30 June 2018).
- Following this, Gamma Limited must file the CbC report, no later than 1 January 2019.



What should be considered?

Is the IOM company part of a group with entities in two or more jurisdictions?

Do the revenues of the "consolidated group" total €750 million or more in the preceding accounting period?

If the IOM company is the UPE and as such the Reporting Entity, the ITD must be notified and a CbC report submitted.

If the UPE is resident in another CbCR jurisdiction, does it have a MCAA or BCAA (that has been activated) with the IOM?

If the UPE is resident in a non-CbCR jurisdiction, has a SPE been identified and relevant notification/submissions made?

If not, the legislation does not need to be considered.

If not, the legislation does not need to be considered further.

Please see further slides for format of CbC report.

If it does, then the IOM entity must notify the ITD (as part of the tax return filing process).

If the IOM entity is the SPE, the ITD must be notified and a CbC report submitted.



IOM Tax avoidance: Budget 2018 changes

David Parsons

IOM Tax Avoidance: the Assessor's dilemma

- Pre 2006 : Locally owned companies taxed
- Post 2006 : Zero/Ten meant 0% tax for most locally owned BUT:
 - Distributable Profit Charge (DPC)
 - Attribution Regime for Individuals (ARI)
- ARI repealed from 6 April 2012: "true 0%"

So, indefinite deferral possible, BUT



Assessor's existing armoury

- Loan to participator rules
- s2PA (eg share buy-backs)

AND

- Schedule 1 Income Tax Act 1980

BUT

- Lack of clarity as to what is “acceptable” in terms of Schedule 1
- Broadness of Schedule 1 powers = double edged sword?



Budget 2018 changes: s2PB

Transactions between 6 April 2011 and 20 February 2018 involving sale of unquoted shares or goodwill to a resident company where debt outstanding at 20 February 2018

Repayment of debt on or after 20 February 2018 = dividend

Sale on or after 20 February 2018 of unquoted shares or goodwill to a resident corporate taxpayer

Sale proceeds = dividend



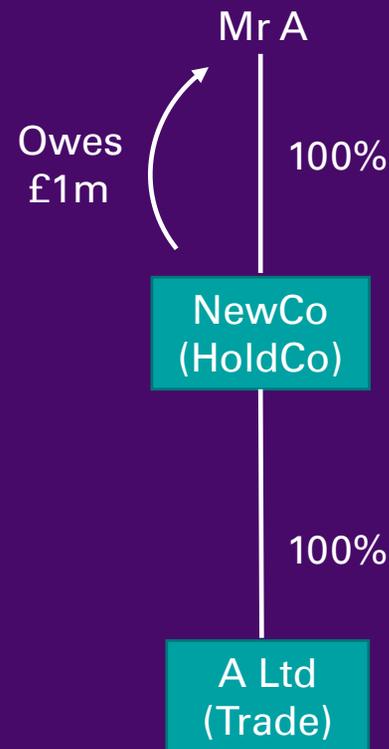
Example 1: Transaction pre 20 February 2018

Before



Sale to
NewCo for
£1m

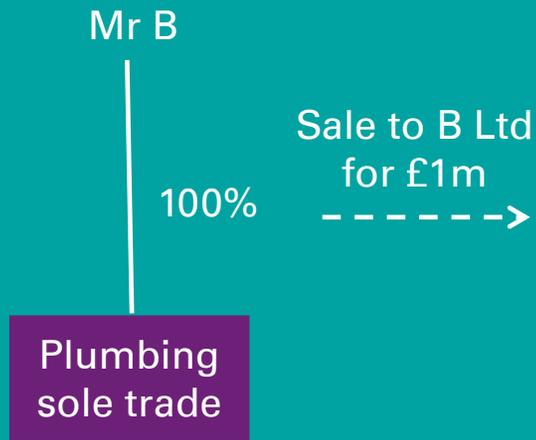
After



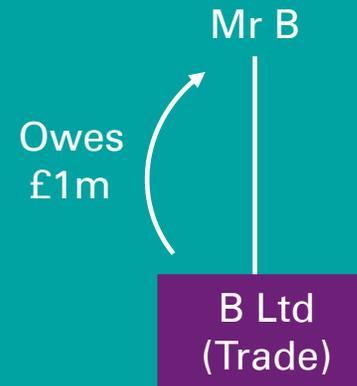
Debt repayments post 20 February 2018

Example 2: Transaction pre 20 February 2018

Before



After



Debt repayments post 20 February 2018.....

Example 3: Transaction post 20 February 2018

Before



After



Sale constitutes a dividend

Anticipated Practice Note

- ITD recognise that s2PB is, in certain situations, too wide in scope
- Practice Note expected to be published imminently
- Expect to have to demonstrate “to the satisfaction of the Assessor”





VAT Update

Paul Cawley

VAT developments

- Brexit
- DASVOIT
- Making Tax Digital
- Domestic Reverse Charge – Construction Industry



DASVOIT (Disclosure of Avoidance Schemes for VAT and Other Indirect Taxes)

- HMRC introduced with effect from 1 January 2018
- An IOM equivalent likely to be introduced later in 2018
- Builds on the existing “hallmarked schemes” area of VAT anti-avoidance and expands across all indirect taxes.
- Requires “promoters” or “users” of arrangements “intended to provide the user with a tax advantage” to disclose arrangements to HMRC
- Responsibility to disclose falls on Promoter, unless:
 - the Promoter is non-UK based;
 - the Promoter is restricted under legal privilege (ie a lawyer);
or
 - there is no Promoter;
 - in which case the client/ user must disclose
- Employs various “tests” to determine notifiable schemes



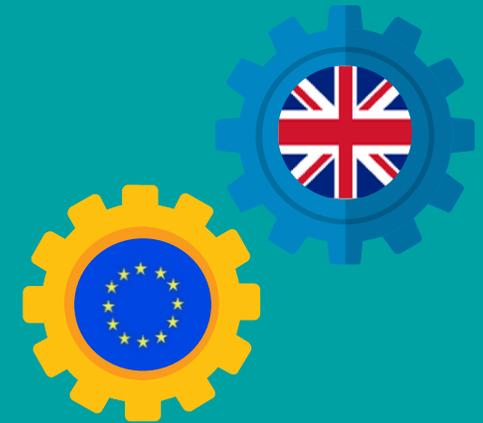
DASVOIT (Disclosure of Avoidance Schemes for VAT and Other Indirect Taxes)

- Schemes entered into before 1 January 2018 are grandfathered
- DASVOIT lists types of “hallmark” including:
 - disapplication of “options to tax”
 - Offshore supplies “insurance and finance”
 - Offshore supplies “relevant business person”
- Various time-limits for the disclosure of notifiable arrangements (typically within 31 days of entering into/ offering, becoming aware of the arrangement).
- Different forms must be used depending on status of promoter/ user.
- There are disclosure penalties, information penalties and user penalties which are initially set by a First Tier Tribunal, then continued by HMRC.
- Penalties range from £600 per day, to £1M (total).



Brexit brief

- 2 years on : no deal with EU27.
- Irish border still unresolved.
- Transitional period expiration of 31 December 2020 agreed but not ratified - “nothing is agreed until everything is agreed” (hinges on Art. 50 process).
- UK Cabinet are currently debating two EU Customs easement initiatives:
 - Partnership model : would see UK collecting EU tariffs at the UK frontier: and
 - MaxFac (maximum facilitation): would rely on technology and a “trusted trader” plan
 - neither has been presented to the EU/ both could be rejected by them.
- 2018 EU Summits : 28 June (N.I.), 18 October (key Summit for Tories) and 13 December
- If Gov cannot agree a deal by 30 November Parliament can intervene and take over negotiations.



Making Tax Digital (“MTD”)

- Flagship HMRC tool aimed at reducing £9bn VAT tax gap and biggest change to VAT systems since Single Market.
- UK matter - not being launched in the IOM.....yet.
- HMRC pilot active since 2018 – still open for volunteers
- To be fully introduced 2 April 2019 (yes, that’s 2 days after Brexit!)
- UK VAT registered businesses operating above the VAT threshold (currently £85K) will be required to:
 - maintain digital records; and
 - send VAT information to HMRC using 3rd party commercial software
- Businesses operating under the VAT threshold may “opt in” if they wish
- HMRC is working with software providers to ensure product availability



Making Tax Digital (“MTD”)

- Exemptions (to be considered on a case-by-case basis):
 - Insolvency
 - Religion : beliefs prevent the use computers
 - Not Reasonably Practicable : remote location, disability, age
- It is possible to register online with HMRC now
- MTD is an IT interfacing conundrum using “bridging software” to convert trader systems to HMRC systems
- Full implementation could possibly be delayed
- HMRC Webinar: <https://www.gov.uk/guidance/help-and-support-for-making-tax-digital>

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Domestic Reverse Charge – Construction Industry

- UK Treasury draft Statutory Instrument : “ *S55a Value Added Tax (Specified Services and Excepted Supplies) Order 2019*”
- Proposal is implement a domestic reverse charge in the construction sector in order to tackle Missing Trader VAT fraud
- 5% and 20% supplies will become subject to reverse charge by the purchaser (ie purchaser accounts for VAT on the purchase and sale).
- Removes the opportunity for the supplier to charge VAT and go missing without declaring the VAT on their sale.
- 7 June 2018 : Consultation opens
- 20 July 2018 : Consultation closes
- 1 October 2019 : SI would become effective
- Unlikely to be challenged and will have a significant impact on over 150K UK/ IOM construction firms.
- Will not apply to builders selling new zero-rated houses.

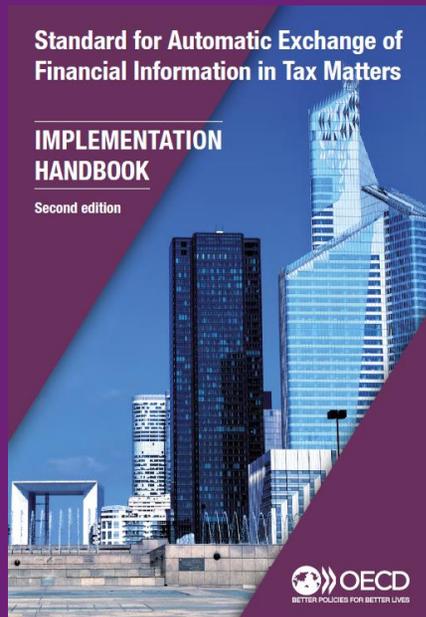




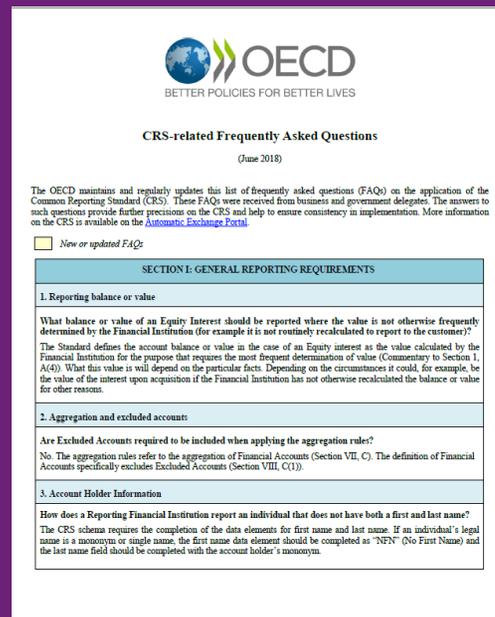
CRS

Clare Kelly

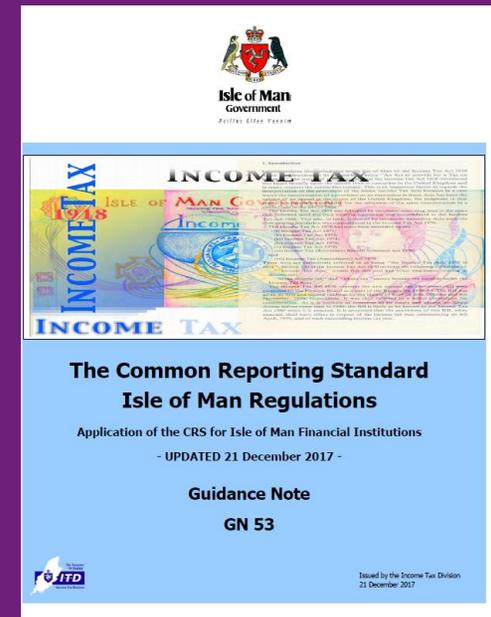
Updated guidance notes



OECD's
Implementation
Manual (updated in
2018)



OECD's Frequently
Asked Questions
(updated December
2017 and June 2018)



Isle of Man Tax Office's
CRS guidance notes
(updated 21 December
2017)

Some key updates

- Equity and debt interests to be reported
- Change of circumstances:
 - Procedures to identify changes in circumstance
 - Updated self-certification required?
 - What to report if updated self-certification not received
- Requirement to collect TINs
- Reporting requirements when an FI is liquidating



Tax Office compliance initiatives

- Effective implementation
- Audit expected
- Penalties





UK property tax

Clare Kelly

Non-residents owning UK property

Consultation - closed February 2018

Legislation expected to be introduced from April 2019

Bring into scope:

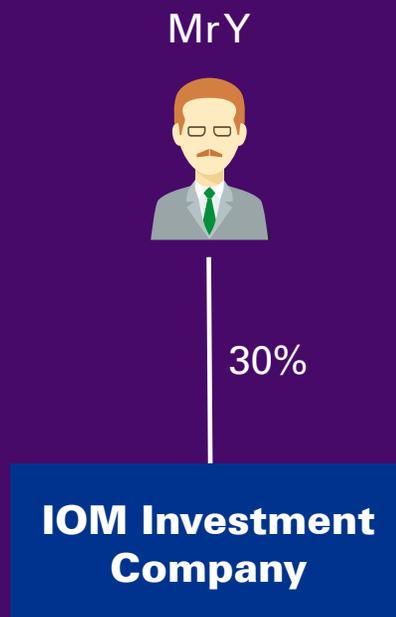
- Sale of commercial property
- Indirect sales of UK property
- Widely held companies owning UK property

Indirect disposals:

- more than 25% owned by non-residents during any time in last 5 years; and
- 'property rich'.



Indirect interests



NRLs into corporation tax

- Legislation expected in Summer 2018
- To take effect from April 2020
- Transitional provisions will be required (eg re capital allowances/ brought forward losses)
- Computational differences between income tax and corporation tax rules:
 - Interest paid – loan relationship rules under CT
 - Interest deductibility rules
 - New CT loss rules
- Requirement to submit iXBRL tagged accounts
- Technical consultation on draft legislation
- expected shortly





EU Substance update

David Parsons

A history lesson

1999: Non-resident company regime abolished (CoCG)

2004: EU Savings Directive implemented

2006: Tax Exempt companies etc replaced by Zero/Ten and DPC (CocG)

2008: DPC repealed and replaced by ARI (CoCG)

2011: ARI repealed (CoCG)

2013: Automatic Exchange of Information Agreements signed with UK and US

2016: CRS comes into force (OECD)

2017: Central beneficial ownership database

2017: BEPS minimum standards implemented (OECD)



Code of Conduct Group: Criteria for screening

1. Tax transparency

1.1 CRS implementation

1.2 “Largely compliant” on OECD Exchange of Information on Request

1.3 OECD MCMAA

2. Fair Taxation

2.1 No preferential tax measures that could be regarded as harmful

2.2 Jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction

3. Implementation of anti-BEPS measures



EU Substance: timeline

6 November
2017 CoCG letter to IOM Government

17 November
2017 IOM commitment letter

8 June 2018 EU Council publish paper outlining 2.2
criteria

**31 December
2018 Deadline for implementation of
legislation...**

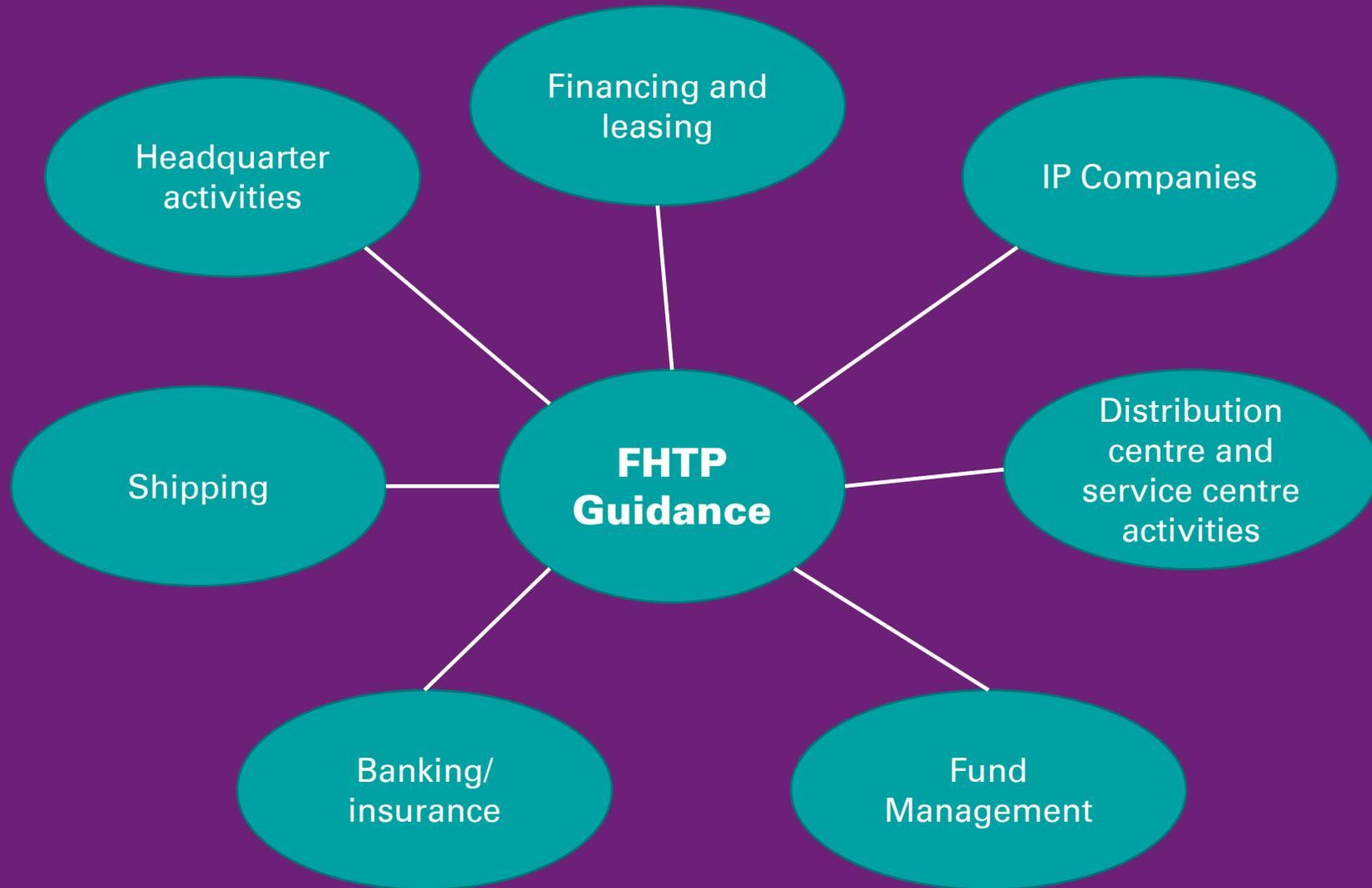


Substance: What is required?

“It is considered that these substance requirements should mirror those used in the FHTP in the context of specified preferential regimes”



Substance: what are the CIGA?



Where will this end?





Questions?



Thank you

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