UK's International Tax Compliance (Client Notification) Regulations Released

On 8 September 2016 the UK's International Tax Compliance (Client Notification) Regulations were released and came into force on 30 September 2016. The Regulations amend the International Tax Compliance Regulations 2015 by requiring financial institutions and certain advisors to identify individuals to whom notifications as outlined in the regulations must be sent on or before 31 August 2017 (along with a covering letter from the financial institution/advisor using set wording provided by HMRC and the relevant links to guidance).

Who is impacted?

The Regulations apply to financial institutions and to individuals and companies who, as part of their business, provide advice or services to individuals relating to offshore accounts, income or assets. Financial institutions are defined in the same way as under the Common Reporting Standard and include banks, building societies, insurers, fund managers, wealth managers and certain trusts. However only Specified Financial Institutions are impacted, e.g. non-reporting financial institutions under the Common Reporting Standard or organisations with charitable or other non-profit purposes are excluded from the client notification obligations, even if they are a financial institution under the Common Reporting Standard.

Information to be included in the notification to clients

HMRC have included a prescribed form of the notification as well as specifying certain statements that should accompany the form. The Regulations also note that it may be appropriate to translate the notification.

The translation may be necessary as the Statutory Instrument also applies to overseas subsidiaries and branches of UK financial institutions, i.e. those that the UK company controls. The enforcement measures are applied to the UK company of the group, although it is noted that it may not be possible to force the overseas subsidiaries to comply. However, it does not apply to UK branches of overseas financial institutions.

The notification highlights there are opportunities for clients to voluntarily disclose information about their overseas tax affairs if they need to. However the prescribed form does not highlight that the Worldwide Disclosure Facility will cease on 3 September 2018 when the increased penalty regime for persons HMRC identify will commence.

Requirements for financial institutions

The individual Account Holders that this regulation targets are those reasonably believed by the financial institution to be resident in the UK for income tax purposes for the tax years 2015-16 or 2016-17 and holding an account with the institution on 30 September 2016 where either that account is a high value account (exceeding $1m) or where, in the relevant period, the individual held certain offshore accounts with the institution (or were referred by it to another financial institution for such an account to be provided).

We understand the requirement to notify identified UK tax resident Account Holders is currently written assuming all countries are an "early adopter" of the Common Reporting Standard. However, it should be interpreted to align with the due diligence requirements of CRS, i.e. if a branch is in a later adopter Common Reporting Standard country, the Regulation will impact High Value account holders who were UK tax resident for the tax year 2016-17 or will be resident for the tax year 2017-18.

We also understand the date to determine whether the account was a high value account may be aligned with the general dates within the Common Reporting Standard (i.e. 31st December).

It seems that HMRC expect Reporting Financial Institutions to make targeted paper notifications, only to those impacted account holders.

Requirements for advisors

Advisers are required to use either the "general approach" or the "specific approach" to identify individuals to whom the prescribed notifications described must be sent.

The **general approach** identifies individuals who were provided with advice or services relating to their personal tax affairs by the adviser in the relevant period.

The **specific approach** identifies individuals who, in that period, were provided with offshore advice or services relating to such tax matters or were referred by the adviser to a connected person outside the United Kingdom for the provision of such advice or services.

Both approaches exclude individuals the adviser reasonably believes were not (or will not be) resident in the United Kingdom for the tax years 2015-16 and 2016-17 or for whom, on 30 September 2016, the adviser has no reasonable expectation of advising further or providing more services. The specific approach similarly excludes individuals for whom the adviser has prepared and delivered (or expects to do so) a personal tax return disclosing the effect of the advice or services provided. An individual identified using the general approach may be similarly excluded if the adviser so chooses.

Control of a business overseas (e.g. Branch)

Financial institutions or advisers controlling similar businesses overseas that are controlled from the UK, are also required to take all steps reasonably open to them to ensure that individuals reasonably believed by the overseas business to have been resident in the UK during the relevant period and who have been provided with accounts in certain overseas jurisdictions or with offshore advice or services relating to personal tax matters are similarly notified in the form prescribed.

Thus the legislation brings into scope subsidiaries (and branches) of UK controlled groups. However, having a UK branch does not bring into scope the rest of a non-UK Financial Institution.

Failure to comply with the Regulations

The Regulations provide a penalty of £3,000 for failing to comply with the obligations they impose. This penalty must be assessed within the period of 12 months beginning with the date on which the failure first came to the attention of HMRC or, in any event, within six years.

However, if client notifications have already been made, (other than by overseas financial institutions) they do not have to be repeated.

KPMG Observations

HMRC have made some significant changes to the draft regulations which were published in February 2016 for consultation. In particular:

- For advisers, the obligations are now restricted to individuals to whom advice was provided in the year to 30 September 2016 and there is a carve-out for former clients for whom there is no expectation of a continuing relationship; and
- For financial institutions, financial accounts that the Reporting Financial Institution is prohibited by law or regulatory obligation from providing a new account as at 30 September 2016 are also excluded from this notification requirement.

HMRC have confirmed they have no objection to notifications being sent out to every client in the firm's database if identifying specific individuals is too time-consuming or onerous.

Where an overseas person is required to send a notification and fails to do so, any penalty for not complying with the obligation will still fall on the UK controlling party. If the laws or regulations in the country the overseas person is based restrict them from complying, then the UK person cannot reasonably expect them to comply, it is unlikely that a penalty will be charged.

For Your Reference

HMRC's guidance on the client notification obligations can be found here.

HMRC format of the client notification letter can be found here.

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