New trust and tax reporting obligations for UK Resident Non Doms — a Mini UK FATCA?

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Introduction

UK resident non-domiciliaries (RNDs), who have offshore bank accounts and interests in non-UK structures, are currently not required to provide any information about those accounts/structures to HMRC, provided that they claim the remittance basis of taxation in the UK, those accounts do not hold assets which produce UK source income and/or gains and nothing is remitted to the UK from the bank account or structure (1). This is about to change.

Under new rules, information about offshore bank accounts and non-UK structures with UK resident owners (in the case of personally held accounts) or UK resident settlors, beneficiaries and protectors (in the case of trust structures) will be provided automatically to HMRC from 2016 even where there is no UK tax payable, nothing is brought to the UK, and all relevant UK persons are compliant with UK tax requirements. RNDs will be able to limit the information passed to HMRC if elections are made – in some cases by spring 2015. But some information must be provided, which will concern many RNDs who, whilst they are tax compliant, are fiercely protective of their personal information for privacy and security reasons.

The changes, although being referred to as 'UK' or 'mini' FATCA, are not only relevant for Americans. The regime is the UK's version of FATCA – enabling HMRC to obtain information in relation to UK taxpayers.

Which accounts and structures do the changes affect?

For now only accounts and structures in the UK Crown Dependencies (2) and certain British Overseas Territories (3) are impacted. These jurisdictions have entered into agreements with the UK setting out the basis upon which information will be provided. The agreements are not identical and the comments below are a guide only to the position. The application of the rules will be fact-specific, and advice should be sought as necessary.

As well as concerning individuals who hold bank accounts in these jurisdictions, obligations are also imposed upon trusts in these jurisdictions that are 'investment entities' or passive 'non-financial foreign entities' (NFFEs). Broadly, if a trust has a corporate trustee or a professionally managed investment portfolio, it will be an investment entity unless under 50% of its income derives from 'financial assets' (excluding real property). If the trust is not an investment entity then it will be a NFFE. It will be a passive NFFE if 50% or more of its income is 'passive income' (which includes rents). Non-passive NFFEs are 'active NFFEs' which do not need to report.

What information must be given?

Where an individual personally holds an account in one of these jurisdictions, that individual's name, address and National Insurance number must be provided together with the number and value of the bank account.

For trusts the reporting obligations vary according to how the trust is classified under the relevant agreement. Where a trust is an investment entity, then information about UK resident settlors, beneficiaries, protectors, trustees, and any other person exercising ultimate control over the trust, must be provided. The information comprises name, address, National Insurance number, the value of the trust (or a share of it depending on the circumstances) at the end of the year, the amount paid, if any, to the relevant UK person and the number of any relevant bank account.

Where a trust is not an investment entity but is a passive NFFE, a relevant financial institution (such as the trustee or investment manager) must provide information on UK resident 'controlling persons'. These include the settlor, the trustees, beneficiaries with a certain level of entitlement to the trust assets , and in some cases the protector. The information is similar to that detailed above for investment entities.

Alternative reporting regime for remittance basis users

RNDs who use the remittance basis are able to elect into a special regime. This regime requires an opt-in by the financial institution holding the account and/or controlling/managing the trust. In addition the RND must make an annual election to the financial institution and self-certify that he is not UK domiciled and is a remittance basis user and that his domicile and right to be taxed on the remittance basis are not, to the best of his knowledge, being formally disputed by HMRC. If an RND fails to provide self-certification, the information described above will be reported 12

months later.

Where a valid election for the alternative reporting regime to apply is made, the information to be provided is the individual's name, address, date of birth and NI number. If the individual is also a controlling person of an entity the name and address of that entity must also be given.

The actual account information to be reported reflects how an individual is taxed under the remittance basis. No name or account balance information is generally required but information concerning funds coming from the UK to the relevant account/trust, passing to the UK from the relevant account/trust or coming from or passing to unidentifiable jurisdictions must be reported.

Although the alternative reporting regime may give RNDs additional privacy, in cases where a trust has both beneficiaries who are RND remittance basis users and RNDs who do not elect to be taxed on the remittance basis and/or individuals who are not eligible to be taxed on the remittance basis, the election will be of limited benefit since the more detailed information reporting requirements will still apply to those beneficiaries who are not taxed on the remittance basis.

When do the rules apply from?

Information must be given by early/mid 2016 in respect of 2014, but the elections to be given for the RND regime to apply must be made by mid-2015, for 2014. It is important that affected individuals are aware that they must act promptly if they are to be benefit from the alternative reporting regime.

Common reporting standard (CRS)

In addition to introducing its own version of FATCA, the UK government has also signed up to the CRS. This is much wider in scope that UK FATCA and will mean that, from as early as 2016, comparable information will start to be exchanged by the UK and other signatory jurisdictions. To date more than 60 jurisdictions are signatories to the convention, including the majority of the OECD countries, Switzerland, Singapore and other financial centres that are outside the scope of UK FATCA. It is believed that, once fully established, the CRS will replace the reporting under UK FATCA described above.

Conclusion

Within the next few years information concerning accounts in a large number of jurisdictions will be available to the UK government. Such extensive reporting will mean that it is more important than ever for taxpayers to ensure that their tax affairs are in order.

If individuals are concerned that the new reporting regimes will expose undeclared liabilities, it is still possible for them to use one of the disclosure regimes to regularise their affairs prior to information exchange taking effect.

For advice about how the rules will affect any accounts you hold personally or trusts of which you are a settlor, beneficiary, protector or trustee, or on the disclosure possibilities, please contact a member of our team.

_1. In circumstances where income/gains have been correctly segregated from 'clean capital' it is possible for an RND to remit that clean capital to the UK without any charge to tax or reporting requirements
2. Jersey, Guernsey and Isle of Man
3. Gibraltar, the Cayman Islands, Bermuda, Montserrat, the Turks and Caicos Islands, the British Virgin Islands and Anguilla_

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