## The Cost Of Getting It Right

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The UK Government is currently faced with a dilemma – to decrease the deficit they obviously want to increase the tax take and decrease the tax gap, but they must be mindful of the fact that 68 percent of UK tax is paid by 10 percent of the population, and the top 0.6 percent of the population pays 30 percent of the tax. The UK is reliant on a very small number of people.

Tinkering with the tax system to increase the tax take from the wealthy should therefore be done with extreme caution and carefully balanced in conjunction with decreasing the tax gap. There are doubtless other areas that must be addressed that account for the tax gap; the belt could surely be tightened on some generous reliefs, and the complete answer may be to carefully consider how the UK taxes, not who it taxes.

With these considerations as the backdrop to this article, we shall explore the recent tax changes that will affect the wealthy and internationally mobile individuals in the UK. Not only will these individuals start to feel the pinch in relation to the basis upon which they are taxed and the ever-changing increasing complexity of the rules themselves, but the draconian penalties they face for getting it wrong will necessitate careful and sometimes expensive advice.

### Taxation Of Non-Doms

In a previous article in this publication,[1] we considered the forthcoming changes to the non-dom regime, so all that is required herein is a short nod to these changing rules that will require careful professional attention as well as an anticipated increased exposure to UK tax.

The concept of permanent non-dom status for UK resident individuals for income tax and capital gains tax will be abolished in the Finance Act 2016. The remittance basis of taxation will no longer be available once the taxpayer has been resident in the UK for more than 15 of the prior 20 years, meaning that any non-UK income and gains can no longer be protected from UK tax by keeping such funds outside the UK.

Moreover the tax rules relating to the trust structures of wealthy individuals and benefits derived from these trusts are undergoing a complete overhaul. The manner by which many non-UK doms hold their UK properties is also set to change, with individuals looking to significantly alter their portfolios of assets or risk a hefty UK inheritance tax exposure. The rules are changing and clients need to undertake a real comprehensive audit of how they manage their affairs, as the costs of getting it wrong are increasing.

We are seeing and should continue to see a subtle (or perhaps not so) shift to increase the tax burden on capital wealth – many non-doms have historically held wealth via UK properties and the new SDLT rules, restrictions on interest deductions on buy to lets, as well as the now well versed ATED and changes to capital gains tax have influenced these investment choices.

## Common Reporting Standard (CRS)

Our clients simply cannot expect that any discrepancies will not be discovered. The CRS was born from a G20 and OECD drive to develop a global standard for the automatic exchange of information to improve transparency to fight tax evasion, and over 90 countries have now signed up.

As an early adopter of the CRS, the UK will be implementing the due diligence requirements to effect the CRS as of January 1, 2016, with reporting due to start in 2017. The CRS will identify individuals holding financial accounts outside their jurisdiction of tax residence and pass information about such accounts to domestic tax authorities, who in turn will send details to the tax authorities in the individual's country of residence. The CRS has been termed FATCA's big brother due to its global reach.

To react to the information CRS may well unveil, HMRC have introduced a series of new offenses.

## Increased Sanctions

It is the clear intention of the Government to increase the downside risk of getting it wrong (either entirely unintentionally or deliberately). Speaking at HMRC's Stakeholder Conference in London, Financial Secretary to the Treasury, David Gauke, said: "Time's up for people who don't pay their fair share of tax by hiding their money offshore. People who evade tax, facilitate or turn a blind eye to tax evasion will now face powerful criminal and civil sanctions under our tough new regime."

The Finance Bill 2016 will include:
Increased civil sanctions for offshore tax evaders. These proposals build on the existing penalties regime for offshore non-compliance as enhanced by the Finance Act 2015, including changes to the way that penalties are calculated for offshore non-compliance, for example, a new asset-based penalty as well as non-financial deterrents, such as enhancing the naming and shaming provisions. Commencement of these provisions will be coordinated with a new final disclosure opportunity;

- New civil sanctions for enablers of offshore evasion, including penalties to match that of the tax evader as well as enhanced naming and shaming;

- A new strict liability criminal offense for offshore evaders. This will not take effect until April 2017 at the earliest, but will mean that it's no longer possible to plead ignorance in an attempt to avoid criminal prosecution.

In addition, the Government will consult further on (and possibly include in Finance Bill 2016):

- A new corporate criminal offense for failure to prevent the facilitation of tax evasion. The Government intends this offense to be introduced before information exchange begins under the CRS;
- A penalty-backed requirement for individuals to correct past offshore non-compliance. This will underpin the final disclosure opportunity and operate ahead of wider reporting of information under the CRS in 2018.

There is no doubt that the Government perceives a large proportion of the tax gap to be represented by offshore evasion, and indeed HMRC has already collected over GBP2bn (USD2.9bn) from previously undisclosed offshore income through agreements with Switzerland, Liechtenstein and the Channel Islands.

These new penalties will certainly mean that the cost of getting it wrong will be great.

## Advance Payment Notices

It would be remiss not to include a short paragraph on the hotly debated Advance Payment Notice (APN) regime.

An APN may be issued to a company or an individual subject to an open enquiry or tax appeal where they have obtained a tax advantage from:

- Arrangements that have been disclosed (or ought to have been disclosed) under the Disclosure of Tax Avoidance Schemes (DOTAS) rules; or
- Arrangements that have been subject to a counteraction notice by the General Anti Abuse Rule (GAAR) panel; or
- Arrangements that have been subject to a "Follower Notice" under the Finance Act 2014 (broadly those arrangements where HMRC consider there to have been a final judicial ruling that applies to similar arrangements).

The APN will operate to deny any tax advantage that arises from the arrangements. This regime that requires payment of tax upfront in this manner will surely put an end to tax planning, some of which is entirely mundane, and within an individual's legitimate right to plan their affairs so as to ensure they pay the correct amount of tax as required under law.

## Conclusion

The minefield of tax legislation that wealthy internationally mobile individuals must now navigate in order to return the correct taxes is verging on unwieldy and unstable. The penalties and sanctions that they face if they do trip up are being ramped up. Of course tax evasion should be dealt with severely, but caution should be advised so as not to restrict an individual's right to plan their affairs in order to minimize their exposure, or indeed trip them up.

The backdrop to all of this, as alluded to at the start, is that alienating the wealthy is not the answer. If one of our clients paid 30 percent of our annual income, we would be pretty nice to that client, not pave the way with traps and then throw him in prison should he get anything wrong!

The UK should be careful about how it treats the wealthy, not forgetting that raising taxes does not always raise yields – the 50 percent tax rate yielded no extra tax revenue, and let us not forget the French exodus following major changes to the tax regime there. As Albert Einstein said, the definition of insanity is doing the same thing over and over again and expecting a different result.

## Endnotes

1 Helen McGhee and Ray McCann, "Coming To (Or Coming Back To) The UK – Be Careful How You Do It!", *Global Tax Weekly*, No. 147, September 3, 2015.