Client Briefing – UK residents

Foreign Account Tax Compliance Act (FATCA)

Background
The UK has entered into agreements with the Crown Dependencies and Overseas Territories ("CDOTs") for automatic disclosure of information about interests in financial accounts held by UK residents (sometimes referred to as "UK FATCA").

"Financial institutions" are required to exchange information regarding the "financial accounts" held by their customers. These terms are defined very widely and will include:

- Deposit accounts held with banks
- Investment management accounts and portfolios held with banks, brokers and investment managers
- Interests in collective investments, including hedge funds and private equity funds
- Interests in trusts and private investment companies managed by a trust and company service provider
- Interest in certain insurance policies.

Calendar years Exchange deadline Information that needs to be reported
2014 30 September 2016 • Name, address, date of birth and National Insurance number if available
- Account number (or functional equivalent)
- Name of the reporting institution and its FATCA identification number if available
- Account balance or value at end of calendar year (or if closed, immediately before closure).

2015 30 September 2016 In addition to the above:
- For Custodial Accounts – the total gross interest, total gross dividends and the total gross amount of other income generated with respect to the assets held in the account
- For Depository Accounts – the total gross amount of the interest paid or credited to the account
- For any other account – the total gross amount paid or credited to the account including the aggregate amount of any redemption payments made to the account holder.

2016 30 September 2017 In addition to all the above:
- The total gross proceeds from the sale or redemption of property paid or credited to the account.

Under the terms of Inter Governmental Agreements (IGAs), which were signed at the end of 2013, the initial exchange of information relating to the calendar years 2014 and 2015 will take place on 30 September 2016.

Preparatory to the exchange of information HMRC intend to introduce a new criminal tax offence – a failure to declare offshore income.

Financial institutions will begin identifying their clients who fall into reporting from 1 July 2014 and the exchange of information with HMRC relating to the calendar years 2014 and 2015 will take place on 30 September 2016. Those holding offshore assets should consider a tax health check in advance of the exchange of information to ensure that all matters have been properly reported to HMRC. Where irregularities are identified, tax disclosure facilities are available which enable UK taxpayers to resolve matters with HMRC in advance of the exchange of information.

The current tax disclosure facilities (including the Liechtenstein Disclosure Facility – the ‘LDF’) are only available up to 31 December 2015. In the March 2015 Budget the Chancellor of the Exchequer announced that once the current disclosure facilities have closed, a new “last chance” facility will be in place, running until mid-2017. The terms will be less generous: the fixed penalty will increase from 10% to 30% and the express guarantee of immunity from prosecution will no longer be available. It is not clear whether the shorter look back period under the LDF will also go. Action should therefore be taken prior to 31 December 2015 to take advantage of the most advantageous disclosure facilities.

Information that will be exchanged under the IGAs
The information to be exchanged is set out in IGAs between the UK and the CDOTs. The exchange of information will be phased in with reporting deadlines as follows:

Continued on next page >
The Alternative Reporting Regime for UK resident Non-Domiciled individuals
There is an alternative reporting regime (ARR) for those UK resident non-domiciled individuals (RNDs) who are charged to tax on the remittance basis. Please see our separate briefing on the ARR.

What does this mean in practice for UK taxpayers with offshore assets?
HMRC is concerned that some UK taxpayers conceal assets held offshore and have taken steps to force disclosure of information from CDOT financial institutions, effectively through an extension of existing Double Taxation Agreements or Tax Information Exchange Agreements. Under the terms of the IGAs, CDOT financial institutions will have a legal requirement to exchange information directly or indirectly with HMRC. Data exchange is “automatic”, i.e. the institution needs to report even if there is no concern about whether UK tax is properly being accounted for. The customer’s consent is not required – except in the case of Bermuda financial institutions, who must explain that HMRC are likely in any event to obtain the information via an alternative route if consent is not provided.

The following types of information will be made available to HMRC:
• The identity of UK individuals, partnerships and companies holding offshore assets
• The name of the financial institution holding their assets
• The balance held offshore
• Details of income derived from the offshore assets and the proceeds of the sale of assets
• In the case of offshore trusts the identity of the settlor (to the extent that they are UK resident) and details of distributions
• In the case of offshore companies the identity of the beneficial owner(s) (to the extent that they are UK resident) and details of movements on shareholder loan accounts.

The exchange of information will identify those who currently have no visibility with HMRC, and those who have not reported or have incorrectly reported income, profits or gains derived from their offshore assets. HMRC will be using sophisticated data matching software to identify targets for prosecution and investigation following the exchange of information.

How can Pinsent Masons help?
Accounts in existence on or after 30 June 2014 will be subject to the new reporting requirements. Although information in relation to the calendar years 2014 and 2015 will not be exchanged until 30 September 2016, the period between now and 31 December 2015 (when the currently available tax disclosure facilities come to an end) provide a window of opportunity for UK taxpayers with offshore assets to review their tax affairs and resolve any irregularities before HMRC finds out and begins an intrusive tax investigation. If there are no irregularities, but HMRC will become aware of the existence of an offshore asset for the first time, it might be advisable to pre-empt an investigation by approaching HMRC with an explanation.

Pinsent Masons can offer:
• Advice regarding the precise nature of the information that will be exchanged and FATCA classification of any structures with which you are connected
• Confidential discussions in the UK or overseas in a legally-privileged environment – as a law firm we do not need to disclose your details to the authorities
• Advice and guidance on the options available to you and reassurance that you will have all the information you need to make an informed decision
• Tax health checks
• Assistance with tax disclosures
• Certainty regarding our fees, including, potentially, a "fixed-fee" arrangement
• Advice on the restructuring of your tax affairs so that you can optimise your tax position for the future.

For any questions, please contact:

Reg Day
Director Offshore
T: +44 (0)20 7054 2531
M: +44 (0)7860 607651
E: reg.day@pinsentmasons.com

Jason Collins
Partner
T: +44 (0)20 7054 2727
M: +44 (0)7790 909079
E: jason.collins@pinsentmasons.com

David Knight
Director of Trusts
T: +44 (0)20 7054 2678
M: +44 (0)7725 221238
E: david.knight@pinsentmasons.com