APPENDIX 534

Exchange of Information between Jurisdictions

VERSION 1.00

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Section

1. Introduction

Over recent years there has been a surge in unilateral information exchange agreements. Firstly there was the introduction of the Lichtenstein disclosure facility followed by the UK-Swiss Agreement on tax disclosure. The UK then spread the net even wider by targeting its own offshore financial centres and, as a result, disclosure facilities with the Channel Islands and the Isle of Man came into force earlier this year.

Now, in a move from the more traditional bilateral agreements, there seems to be a shift towards the kind of multilateral agreements that will see several countries all sharing information with each other. In due course there is no reason to believe that this approach will not take place on a global basis.

Notwithstanding the TIEAs signed over recent years with the UK and a number of tax havens (otherwise known as offshore financial centres), since the introduction of FATCA by the US government, Europe has followed suit in introducing agreements that are multilateral in nature.

The below timeline shows a summary of the rise of information exchange between member states and offshore financial centres.

2. The story so far

2000, June – EU starts negotiations on its Savings Tax Directive, resolving that "with a view to implementing the principle that all citizens resident in a Member State should pay the tax due on all their savings income, exchange of information on as wide a basis as possible shall be the ultimate objective of the EU".

2001, April – UK banks start passing details of all new accounts opened by non-residents to over 25 countries.

2005, July – Savings Tax Directive comes into force. Most EU countries start to automatically exchange information. Austria, Belgium, Luxembourg, Isle of Man, Channel Islands, Switzerland, Liechtenstein, Andorra, Monaco and San Marino start deducting a withholding tax from savings income.

2006, April – Barclays Bank is forced to disclose details of its offshore customers to HM Revenue & Customs (HMRC).

2007, February - Four major UK banks are made to reveal details of offshore customers to HMRC.

2009, March – International pressure builds on offshore financial centres in wake of the financial crisis. Several offshore financial centres say they will cooperate with the Organisation for Economic Cooperation and Development (OECD) principles on exchange of information on tax matters.

Switzerland agrees to relax its banking secrecy rules and exchange more information on suspected tax evaders.

2009, April – At the G20 Summit, world leaders declare the "era of banking secrecy is over" and threaten offshore financial centres with sanctions and blacklisting if they fail to comply.

2009, August – 308 UK and offshore banks are ordered to give HMRC details about customers with offshore accounts.

2009, August – Liechtenstein signs landmark tax agreement with the UK.

2010, March – US Congress enacts its Foreign Account Tax Compliance Act (FATCA), to fully come into effect in 2014. It aims to ensure that the US tax authorities, the Internal Revenue Service (IRS), obtain information on financial accounts held by US taxpayers anywhere in the world. Foreign Financial Institutions have to report their American clients' affairs to the IRS.
2010, June – Swiss parliament agrees to hand over names of 4,450 UBS bank's American clients to US government.

2010, October – Switzerland and the UK agree to negotiate an accord to tax Swiss bank accounts owned by UK taxpayers.

2011, July – Isle of Man and Guernsey abolish the withholding tax option for EU residents and start to automatically report on interest earnings, ending banking secrecy for EU residents.

2013, January – The bilateral tax agreement between Switzerland and UK comes into force. If an account owner does not authorise automatic disclosure to UK authorities large withholding taxes are deducted to cover past and future tax liabilities.

2013, February - The Isle of Man agrees to automatically exchange information with the UK on tax matters. The agreement is backed by a disclosure facility to allow UK taxpayers to regularise their affairs if necessary.

2013, March - Guernsey, Jersey and Cayman Islands also agree to automatically report bank account information to the UK tax authorities.

2013, April – The G5 countries of the UK, France, Spain, Germany and Italy announce that they will develop and pilot a new multilateral tax information exchange agreement, to exchange a wide range of financial information, based on the same principles as the US FATCA. They urge the European Commission to take the lead in promoting a global system of automatic information exchange.

2013, April – Luxembourg's Prime Minister says that it is preparing to ease banking secrecy.

2013, May – UK Chancellor confirms that all British Overseas Territories with significant financial centres had agreed to sign up to the G5's strategy on tax transparency.

2013, May – After Luxembourg and Austria drop their opposition, EU Member States agree to open negotiations on an updated Savings Tax Directive tax accord with Switzerland, Liechtenstein, Monaco, Andorra and San Marino, most likely to request exchange of information.

2013, May - Swiss Private Bankers Association urges the Swiss Federal Council to abandon its "white money" strategy, and to opt instead for an automatic information exchange regime, in particular with the EU.

2013, May - Nine more countries, including Singapore, Luxembourg and Austria signed up to the OECD tax deal which will see them exchange information in a bid to clamp down on individuals and businesses using offshore accounts to avoid paying tax.

2013, June – David Cameron urges the Crown Dependencies Overseas Territories to sign up to new agreements to exchange of financial information.

3. The move from bilateral to multilateral agreements

As shown in the timeline above, the UK Government has now signed an automatic information exchange agreement, which will operate on a multinational basis, with France, Germany, Italy and Spain in a bid to crack down on tax evasion. This is known as 'the G5 pilot'.

The G5 pilot is based on the model agreements negotiated by the five countries with the United States government in order to comply with the US Foreign Account Tax Compliance Act (FACTA).

Under the terms of the deal, a wide range of financial information will be automatically exchanged between the five countries. This provides a template for wider multilateral automatic tax information exchange going forward.

Also shown in the timeline above, is the fact that since the G5 signed this agreement, many other countries including well known tax havens have followed suit.

This signals the beginning of what will inevitably be the move towards a global system of information sharing between countries on a multilateral basis.

4. The reason that countries are becoming increasingly willing to share information

It seems that tax havens the world over are voluntarily joining up to these types of schemes in order to avoid blacklisting by the OECD.

The effect of OECD blacklisting can be severe as financial transactions stand to be crippled by close scrutiny by transacting banks and the need for those transferring funds to identify themselves and the nature of transactions at every turn. In this way, getting funds in and out of a blacklisted country could end up proving to be an administrative nightmare resulting in huge disadvantages to carrying out business of any kind there.

5. The type of information that is being/will be shared

5.1 G5 pilot scheme

The G5 pilot scheme is based on the US FATCA model agreement and provides that the information to be obtained and exchanged is:

- the name, address of the account holder of a foreign national,
- the account number,
- the name and identifying number of the Reporting,
- Financial Institution,
- the account balance as of the end of the relevant calendar year or other appropriate,
- reporting period or,
- if the account was closed during the year, immediately before closure;

in the case of any portfolio Account:

(a) the total gross amount of interest,

(b) the total gross amount of dividends, and

(c) the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period, and

(d) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period;

in the case of any Depository Account:

- the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

in the case of any account not described in subparagraph (5) or (6) of this paragraph:

- the total gross amount paid or credited to the Account

5.2 Mutual Assistance Directive

The G5 countries are also pushing for progress on the implementation of article 8 of the Administrative Cooperation and Mutual Assistance Directive of 2011 which provides that:

''each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding **taxable periods** as from 1 January 2014 on the following:

- income from employment;
- director's fees;
- life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;
- pensions;
- ownership of and income from immovable property.

Member states will be obliged to share information from 1 January 2015 onwards.

As from 1 January 2017 the list above is to be expanded to include:

- dividends,
- capital gains and
- royalties.''

5.3 Bilateral agreements such as between the UK and the Channel Islands

These agreements mean that the contracting member states are obliged to share the following information on non-resident individuals holding accounts within their jurisdiction:

- Name and address of account / portfolio holder
- Account number
- Name of financial institution
- Account balance
- Gross amount of interest, dividends and other income generated by the account and paid or credited to the account.
- Gross proceeds for the sale or redemption of assets within a portfolio account

5.4 The Savings Tax Directive

This covers savings income on which interest is paid in every member state. Each member state is obliged, under this directive, to report on non-residents holding bank accounts within their member state to that individual's home tax jurisdiction.

Information passed over will include:

- Individuals name, address and residency details,
- Details on the source of the funds
- The amount of savings held
- the period to which it relates

5.5 Extending the Savings Tax Directive

The EU plans to extend the Directive so that from January 2015 all EU Member States and third party signatories will automatically exchange information, and that the income to be reported on will go beyond savings income to include:

- Life insurance products
- Pensions
- Employment income
- Directors' fees
- Immovable property – ownership and income

From 2017:

- Dividends
- Capital gains
- Royalties

6. Case study

We are aware of a case where HMRC is chasing an individual for an unpaid Portuguese tax liability.

The individual had sold their home in Portugal and then moved back to the UK without declaring the gain to the Portuguese tax authorities or paying the tax due.

The individual, on settling back into UK life was tracked down by HMRC on behalf of the Portuguese tax authorities and received a demand for payment totalling £23,019.87 which included, interest and costs.

7. Conclusion

As we can see, going forward reporting requirements, which are slowly being endorsed by more and more countries, will leave little room for tax evasion or concealed offshore funds.

The tax authorities will now have far more information available to them on which to commence tax investigation proceedings.