Taxing Issues: A Shrinking World

In 1789, Benjamin Franklin allegedly wrote in a letter 'In this world nothing can be said to be certain, except death and taxes'.

Many have challenged his supposed comments over the years by unilaterally determining that even taxes are optional. Their world is, however, rapidly shrinking. The net is rightly closing in on those who do not pay their taxes, whether unintentionally or deliberately.

In a world of employees working across borders, this applies equally to both the individual and the employer. This article examines some of the issues that arise, and details some of the steps tax authorities are taking to ensure that tax due is paid.

Background

In years gone by some taxpayers adopted unsavoury habits when working across borders such as:

- Reporting income and gains received from one location only whereas payment was received in at least two locations
- Forgetting about and not reporting income, gains and assets derived in other locations
- Treating a single payment differently in different countries to get a different tax approach by altering the description. For example, a 'termination bonus' for leaving one country and a 'golden hello' for arriving in another
- Not tracking trailing payments or payments spanning longer periods, such as bonuses and equity awards
- Wilfully ignoring the tax rules, as doing so would incur 'compliance costs'. For example, not tracking business travellers as it is 'too hard and costly to do so'
- Relying on the failure of tax authorities to cooperate or share information.

The tax authorities are rightly addressing such matters in the UK and elsewhere and are rapidly introducing their own methods to encourage greater compliance.

Additionally, tax has become far more newsworthy in recent years. Companies and individuals want to be seen as good corporate and individual citizens. Whether this is simply to be compliant, to protect their reputation/profits or to ensure they are not by-passed in receiving official honours is debateable, but this was not and is not always the case. In today's world, individuals and businesses will be publicly castigated if they are not seen as paying their 'fair share' of tax. News of any such failures will be rapidly shared via longstanding and new media platforms. Paying the 'right tax' is now positive news.

Steps To Encourage Greater Compliance

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Education And Awareness

HMRC has advised that there a number of common areas of error when it comes to international assignees, as follows:

- Failing to operate UK wage withholding (PAYE) on all cash payments made to include home, host and third country locations – simply paying amounts in another country, perhaps by a different legal entity in a different currency does not mean that the payment is not taxable – you do need to look at all payments to determine taxability
- Failing to report all benefits provided in home, host and third country locations – again simply providing benefits pre or post-assignment in another country, perhaps by a different legal entity in a different currency, does not mean that the benefit is not taxable – you do need to look at all benefits provided to determine taxability
- Failing to track and report trailing payments such as bonuses and stock awards. These payments may span several tax years and periods in several countries. Ignoring this is likely to give rise to problems. Do track all such payments and look to see what tax is due and where
- Failing to track short-term business visitors – the performance of duties in the UK may give rise to UK taxable income. Treaty exemption may not be due. How can employers determine potential PAYE if they are not tracking such visitors?

By sharing common areas of error, HMRC aims to educate employers to look out for such issues and take steps to ensure compliance. Interestingly, these areas are also specific targets for Employer Compliance reviews. Stay one-step ahead of HMRC by asking related questions. Do track properly and report correctly.

HMRC is not the only tax authority to step up their interest in international issues. Do read the US article in the Global Tax Update to see how the US Internal Revenue Service has decided to increase examination of tax returns that include foreign elements.

Again, HMRC is also not the only tax authority to focus on business travellers. All are now taking a far greater interest with certain countries having strict or new rules such as Canada and Ireland. You ignore business travellers at your peril.

Employer Compliance Reviews

HMRC conduct employer compliance reviews to ensure that employers are correctly meeting their tax and NIC requirements in relation to their employees. We are currently seeing more of these reviews and increased HMRC activity. These reviews can be either in person or by means of an initial questionnaire. An employer found to be in breach of the legal obligations in these areas can face serious consequences.

These reviews include internationally mobile employees, the taxation of their regular employment income as well as the tracking, reporting and taxation of their bonuses and equity income. HMRC also want to review relocation and assignment policies/letters so they can cross-reference these to payments received including incentive/share plans.

Specific questions raised include:

- What types of employees within your business typically travel and for what purpose and to where?
- Is travel & subsistence (T&S) provided to any non-employees and if so why?
- How do you pay and account for any T&S payments?
- Do you have a travel policy document – If so can you attach a copy?

- Are any employees seconded from an overseas subsidiary parent or associated company?
- If so, what duties are undertaken?
- Are relocation expenses paid?
- Are any of your employees working abroad on assignment?
- If so, where and how long is the assignment?

Questions will also be asked in relation to directors. Do not forget to address UK and non-UK issues in relation to non-UK tax resident directors.

Common Reporting Standards (CRS)

The Common Reporting Standard (CRS) is a global standard for the automatic exchange of information, commissioned by the Organisation for Economic Cooperation and Development (OECD). Over one hundred countries have committed to CRS and the list is growing.

Overseas financial institutions are obliged to provide details to HMRC about anyone who owns foreign investments and appears to be a UK resident, for example, by having a UK postal address. The United States Foreign Account Tax Compliance (FACTA) rules are another example of how non-UK tax authorities seek to ensure compliance occurs.

HMRC will soon be receiving significant amounts of information. This information is provided online and will be easily linked to individuals' tax files. Reports will include information on remittance basis users, which is likely to be of particular interest to HMRC. Financial institutions are not under any obligation to notify clients that information can or will be disclosed to tax authorities of other CRS member countries.

The days of relying on limited cooperation between tax authorities is diminishing. Should an individual forget about assets held and income received in other countries, tax authorities may well find out in any event. Stringent penalties will apply in such instances.

Requirement To Correct (RTC)

The RTC deadline of 30 September 2018, deliberately coincides with the commencement of HMRC receiving significant information electronically from overseas tax authorities under Common Reporting Standards (CRS).

RTC is a statutory obligation for taxpayers with overseas 'matters' to correct any historic tax positions if necessary. Individuals who fail to comply will face punitive financial penalties and other severe sanctions. For example, a tax-geared penalty of between 100% to 200% of the tax not corrected and a 150% minimum for prompted disclosures.

Although RTC applies to individuals, this could affect your organisation from an international assignee/business traveller perspective.

The potential impact for Short-Term Business Visitors (STBV) is confirmed in recent updated RTC guidance published by HMRC, where they set out two specific examples involving STBV's where a failure to notify HMRC of a liability to tax can give rise to penalties. Will the business visitor even know that they have an obligation to notify HMRC? Ignorance of rules is not an acceptable excuse. Inevitably, any STBV would immediately look to their employer to meet any liabilities and, in the two specific examples mentioned by HMRC, UK PAYE could be due in any event by the 'UK employer'.

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The operation of an STBV agreement and/or an annual PAYE scheme provides an exemption for the STBVs to file a UK tax return provided they meet the terms of the relevant agreement. Where a STBV agreement or Annual PAYE Scheme is not in place, or the STBV does not meet the terms of either agreement, all visitors will be required to file a UK tax return.

The UK is not the only country that seeks to encourage individuals to correct their historic filing positions. For example, in Ecuador, natural persons who have the below assets outside of Ecuador which amount to US$100,000 or more at the end of the fiscal year must report them to the Internal Revenue Service:

- Deposits in savings
- Checking accounts
- Term deposits
- Investment funds
- Managed funds
- Fiduciary rights.

This information must show: the type of asset, account number, country in which the asset is located and its value. This information must be reported by February of the following year.

Again the issue of penalties arises. The concealment of information regarding such assets abroad will be subject to a fine. This will be equivalent to 1% of the total assets of the taxpayer, or 1% of the income of the previous fiscal year of the concealment, whichever is greater, for every month or fraction of month of delay in the declaration, without exceeding 5% of each item.

Tax Amnesties

Amnesties occasionally arises, such as recent legislation in Turkey relating to foreign assets. The Tax Amnesty Law, allows Turkish tax residents to bring assets acquired in another country to Turkey under beneficial conditions. It may also include immunity from enquiry and inspection in relation to foreign assets.

Where qualifying dividends and capital gains derived from foreign stock assets were remitted to Turkey, and declared by 31 July 2018, then they were not taxed. If assets are declared after 31 July 2018 but by 30 November 2018, they will be taxed at 2% - the assets must be brought into Turkey within three months of the declaration being made.

Proof of transfer of income to Turkey within the time period specified must be given in both of these instances. The income from the assets brought into Turkey must be reported on the tax return; however, it will be shown as exempt from tax if it meets the criteria for exemption and will not have any effect on the income tax calculations.

The amnesty also applies to Turkish resident taxpayers participating in stock arrangements with their employer, where the underlying shares are foreign stock.

Turkey is not the only country to provide an 'amnesty' or some specific type of encouragement to disclose. For example, in the UK we had the Liechtenstein Disclosure Facility, the Offshore Disclosure Facility and specific measures linked to Swiss bank accounts.

Another area of historical non-compliance for international assignees was the practice adopted by some companies and individuals of declaring for host tax purposes a 'local/host salary' only. The bulk of the salary paid in the home or a third country may not have been declared for tax purposes in the host country. This occurred in countries such as India, where initially there was perhaps lack of awareness of the overall compensation package available to employees of international companies. Reviews and reports received by the tax authorities led to amnesties to encourage disclosure. Once such awareness is gained by a tax authority it is seldom forgotten.

Extension Of Offshore Time Limits

HMRC is extending the time limits that apply whereby they can raise an assessment in cases of under declared offshore income.

Offshore tax evasion, avoidance and non-compliance pose a threat to the UK tax base. It has been an HMRC focus area for some time now to ensure that everyone pays the tax they owe, including on offshore income and gains. It can take HMRC much longer to establish the facts concerning offshore transactions than in equivalent onshore cases, as it can be more difficult to access the information needed to understand the transactions. This is particularly true where complex offshore structures are used.

The existing UK time limits for income tax, inheritance tax and capital gains tax allow an assessment to be made at any time not more than 4 years after the end of the year of assessment to which it relates.

An assessment can be made at any time not more than 6 years after the year of assessment if the non-compliance is due to a failure to take reasonable care. Where an assessment involves a loss of tax brought about deliberately, the assessment time limit is 20 years after the end of the year of assessment. This time limit will not change.

Due to the additional time that may be required in offshore cases, HMRC may discover an under-declaration too late to assess the tax due under the 4 or 6 year rules. The time limits are therefore being extended to a minimum of 12 years to allow HMRC more time to establish the facts in offshore cases.

Individuals with offshore assets must ensure they are clear on their reporting requirements for UK tax purposes. HMRC continue to focus on this area due to their view that not all offshore income is being correctly reported. They now have an extended period to raise assessments in cases where this is not happening. This ties in with the wider theme on increased sharing of information between tax authorities to ensure greater compliance.

Corporate Criminal Offence Legislation

Corporate Criminal Offence (CCO) legislation has been in effect since September 2017, and HMRC's focus on this is increasing. The CCO legislation covers the failure to put necessary measures in place to prevent the facilitation of tax evasion.

A CCO is made when a company has failed to take the necessary steps to prevent tax evasion carried out by an associated person acting on their behalf in the UK or overseas. Failure to ensure your business is compliant may lead to an unlimited fine, public record of conviction and reputational damage.

Here are some of the areas where you may be at risk of non-compliance:

- Treating individuals (contractors/gross-paid individuals) as self-employed when their employment status should be employed, leading to under declared national insurance contributions and income tax
- Not keeping track of your short-term business visitors - they could have spent more than the allocated number of days in a tax year in a jurisdiction and therefore may be obligated to file tax returns and pay income tax on employment income sourced to that country
- If you have sent staff to work overseas to carry out income generating work, there is a risk that the activities carried out may be sufficient enough to create permanent establishment in that country. The associated registration and tax filing must then take place
- Depending on the legislation of the country in which you have an associated person, they may be obligated to declare the income derived in that country.

In summary, as long as you ensure you have the necessary measures in place, and these are robust and remain up to date, you can minimise the risk of fines and/or convictions applying to your company.

Other Measures

The above are only a few of the 'measures' introduced to ensure compliance. Others include:

- Approach to tax avoidance. Tax evasion is clearly wrong, but HMRC, assisted by the Press and the Public, have encouraged debate regarding tax avoidance. What is acceptable or not? What is aggressive or not? When do matters such as investment in film schemes, pensions or individual savings accounts or use of Deeds of Variation for Inheritance Tax purposes change from being acceptable to unacceptable tax planning? Whose decision is it?
- Your HMRC Customer Relationship Managers recently renamed Customer Compliance Managers (CCM's). According to HMRC's website, their primary role is to ensure the business pays everything they owe. This involves building in-depth knowledge of the business and the sectors they in which they operate. The CCM will ensure regular dialouge and discussion occurs. They know the right questions to ask relating to international assignees and will know all about Base Erosion & Profit Shifting (BEPS) and Country-by-Country reporting (CbCR)
- Senior Accounting Officer (SAO) rules aim to reduce larger businesses level of tax risk. The rules apply to UK entities with a £2 billion balance sheet total or £200 million turnover and impose obligations on a specified individual within the organisation. Naturally, penalties are chargeable for non-compliance
- Necessity to publish your tax strategy – For example, where a UK group, sub group, company or partnership has a turnover above £200 million or a balance sheet above £2 billion, they need to publish their tax strategy. This requirement also applies to UK companies and groups that form part of a multi-national enterprise group that has a turnover in excess of 750 million euros. Penalties apply for non-compliance. This tax strategy should include:
  - How your business manages UK tax risks
  - Your business's attitude to tax planning
  - The level of risk your business is prepared to accept for UK taxation
  - How your business works with HMRC
  - Any other relevant information relating to taxation.

The list of measures is only likely to increase.

Summary

The historic approach that some individual assignees and some employers have taken to tax must change. Failure to comply is not, was not and should never have been option. HMRC and other tax authorities rightly recognise that cross border activities give rise to increased possibilities for non-compliance and all are taking active steps to encourage and/or coerce compliance. Ignorance of the rules or wilfully refusing to apply them, perhaps as they are too difficult or too costly, are not acceptable excuses. Maybe Benjamin Franklin was right after all.

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