Tax Compliance in the Transparent New World We Now Inhabit

A panel of legal experts reflected on the compliance challenges facing Asia's wealth management industry. After the rollout of new regulations such as FATCA, CRS, AEIO and other rules and directives in recent years, the panel looked at the impact so far and looked forward, perhaps with some further trepidation, to the next phase of regulatory forays as authorities extend their sights to alternative assets and to uncovering literally any form of irregularity they can possibly find. In this brave new world, prudence and caution must be the new watchwords.

These were the topics discussed:

- *CRS, AEOI, MDR and beneficial ownership registers. What next?*
- *FATCA: how is this legislation developing, what enforcement has taken place, what impact is it having, and will it be watered down?*
- *Mandatory disclosure of tax avoidance schemes to fight against 'base erosion and profit sharing' (BEPS)*
- *Prosecution of the 'enablers' of tax evasion.*
- *Unexplained Wealth Orders : are Asian jurisdictions likely to follow the new UK regime?*
- *How to best obtain cooperation from clients to meet tax compliance standards?*
- *What more can be done to educate clients about the potential impact on them of tax transparency?*

PANEL SPEAKERS

- **Vikna Rajah**, Partner, Head of Tax, Trust & Private Client, Rajah & Tann
- **Zac Lucas**, Founder, Head of Legal, Centenal
- **Laurence Lancaster**, Barrister-at-Law, Group Head of Tax, Sovereign Group

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THE KEY TAKEAWAYS

Name and shame, as well as legal proceedings

As well as the legal implications of non-compliance, one panellist conjectured that authorities might opt for name and shame tactics that would impact both individuals and their firms if they are implicit in non-disclosure or avoidance schemes. This might often involve non-compliant overseas structures and schemes.

Singapore's penalties severe, UK's penalties punitive

While Singapore is taking more the route of criminal charges and jail sentences, the UK is more focused on claiming as much back tax as possible, including hefty retrospective levies. Meanwhile, the OECD is pushing for more proactive disclosure from anyone who might suspect wrongdoings.

FATCA - first legal case but possible watering down

The first FATCA prosecution from the US arrived last year, but President Trump does not appear a keen advocate of the legislation, which could become watered down later. If so, the US advisory community could end up in a somewhat advantageous position vis-a-vis the EU, which is pushing ahead with ever-tighter rules. In short, a level playing field is at risk.

Future regulation will diversify targets

While the past few years have been about FATCA, CRS, AEIO and more recently MDRs, and their local manifestations, the next phase of regulation and compliance will see authorities focus more on alternative asset classes, non-financial entities (NFEs) director fees and other areas.

Reaching beyond borders

Could revenue authorities in different countries later start collecting tax for other revenue authorities? One panel member said "yes" while another said the focus would likely remain first on a broader array of assets and also more on the punishment of advisers and intermediaries, as the easiest targets.

Privacy? Lip service paid, but the reality is different

The quest for information has become more critical than data privacy. This fundamental conflict between privacy and rights of individuals as against excessive regulatory demands for transparency will likely become an ever more prominent concern.

Exotic jurisdictions need to re-evaluate their raison d'etre

Exotic offshore jurisdictions, for example, some of those in the Caribbean countries, will need to create or focus on different services to survive as offshore financial centres. They are from an age that's coming to a close in terms of their current offerings.

Offshore to onshore

While there are still bona fide and acceptable reasons for offshore structures in some of the exotic centres, more clients are seeking to move their structures onshore, for visibility and peace of mind.

Be cautious about what is tax mitigation and what is avoidance

In today's environment, advisers and intermediaries are advised to err well on the side of caution, especially as the penalties for advisers are so severe. Prudence should be a watchword.

AN EXPERT OPENED THE DISCUSSION by explaining that name and shame is a tactic some authorities can use, rather than going all the way to criminal proceedings, for errant clients or bankers. "Your name could appear in a gazette, for example, so you become known as a person working at a certain institution who has facilitated avoidance arrangement with clients from another country, for example, Indonesia. This will have a major impact on a career."

"That is a possibility, but right now," said another panellist, "the tax laws on disclosure here in Singapore and covering anyone who helps any evasion are extremely stringent and punitive. And we are likely to soon also see the implementation of the OECD requirement for proactive disclosure from anyone who might suspect wrongdoings."

Show me the money

Another expert noted that the UK is just as strict but focuses more on getting as much tax as possible, rather than prison sentences. "The penalties for long-standing tax negligence are highly punitive in the UK, he explained, now as much as 200% of the amount owed."

The key, said another expert, is to behave and advise in as prudent a manner as possible. "Singapore is a clean jurisdiction," they said, "and any money coming in from overseas must be clean, and to achieve that the banks and advisers will need to be meticulous right from account opening."

LAURENCE LANCASTER
Sovereign Group

ZAC LUCAS
Centenal

FATCA – here to stay or losing its way?

The discussion turned to FATCA, with one panellist noting the first prosecution from the US last year, and another adding that President Trump had indicated he might scrap the FATCA legislation. Meanwhile, whatever the possible evolution, including its watering down or elimination, the EU is determined to further bolster CRS with its mandatory disclosure rules (MDRs). “This means,” said one expert, “that US bankers and advisers might be in a somewhat advantageous position in the future, able to have more open discussions with their clients. That goes against the idea of the creation of a level playing field for best practices.”

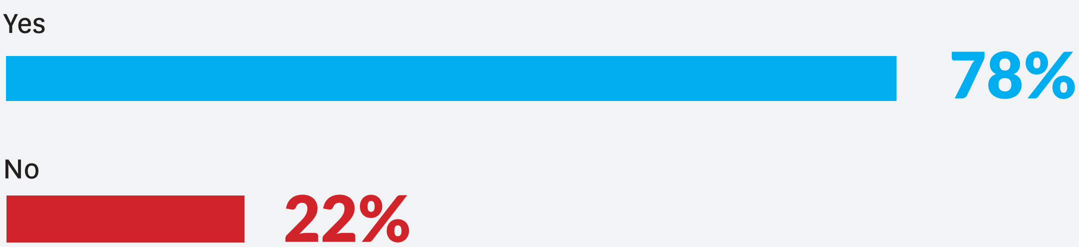
Most clients, certainly in the UK context, are fine with the disclosure obligations today, noted another panellist. “But some of the older generations of clients maintain a secretive stance and they are the most difficult to deal with,” he said. “However, the revenue authorities everywhere are far more likely to discover as a result of CRS, automatic exchange of information (AEIO) and FATCA and all of the other international regimes. Secondly, when they do find out the penalties will be extremely severe.”

The next phase...

The panel turned their attention to the next phase of regulation and compliance. “I think we will see an expansion of the class of assets that will be captured on disclosures, so they might focus more on non-financial entities (NFEs), director fees, land assets, precious metals, as well as other alternative

VIKNA RAJAH
Rajah & Tann

DO YOUR CLIENTS ACCEPT THAT THEY MUST BE TAX COMPLIANT AND EMBRACE ALL THE CONSEQUENCES THAT ENTAILS?



Source: Compliance in Asian Wealth Management Forum 2019 assets such as cryptocurrencies and so forth."

"From the UK perspective," said one panellist, "there is a drive to prosecute evasion that takes place in other countries. "It could be an individual, or a corporate that is complicit with the facilitator, and associated parties. There are two offences under a UK criminal act of 2017, one is the UK tax evasion offence and the other is the foreign tax evasion offence. So, you could, for example, see the UK criminalising the conduct of a corporate, for example, based in Singapore or Hong Kong, while the facilitator and the evader could be based anywhere in the world. It is extending the extraterritorial reach of UK tax legislation where there is ultimately direct tax evasion in the UK."

The same expert extrapolated that in the future, revenue authorities in different countries may start collecting tax for other revenue authorities. There is already this vast exchange of information taking place, so it seems a natural next step as it boosts tax revenues as well."

Wider angle perspectives on assets and income

Another panellist agreed with the view that authorities around the world will broaden their focus on more asset classes but felt that cross-border tax collection would not occur in the foreseeable future. "What we will see more of is for intermediaries and service providers being liable for offences where they are a party to tax avoidance or tax evasion arrangement," they said.

As greater disclosure takes place, data privacy becomes an ever-greater concern. "The two are effectively colliding," said one panellist. "There is a UK law firm apparently launching a claim under the GDPR that CRS goes too far. We know that the European Data Protection Board since 2016 has concerns that CRS does not adequately take into consideration the safeguards on the free use of information. So we expect a conflict between fundamental privacy and rights of individuals versus this sort of rampant demand for transparency. And there are clearly certain jurisdictions that won't respect privacy rights. I think at some point it has to stop."

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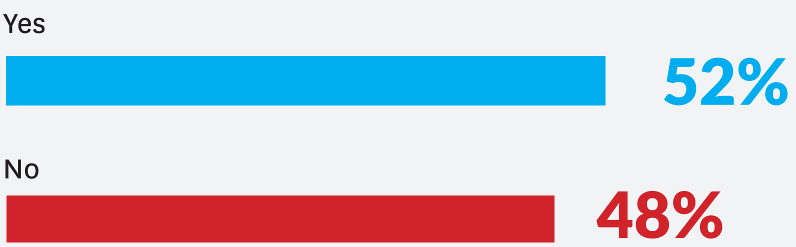
Privacy – lipservice paid but....

The Chair remarked that a popular question from the audience at the event was whether anyone has any right to privacy anymore. "Countries are strapped for cash," replied a panellist, "so the focus is more revenue collection at the expense of privacy. Governments and even courts today

DO YOUR CLIENTS REGULARLY COMPLAIN TO YOU ABOUT THEIR LACK OF PRIVACY?



Source: Compliance in Asian Wealth Management Forum 2019 appear to value data exchange over privacy."

The topic of transfer pricing and profits allocation across jurisdictions was then addressed, with an expert noting that the tax authorities are coming down harder on transfer pricing.

That comment led naturally to a brief assessment of exotic jurisdictions, for example in the Caribbean. "The biggest market for BVI entities," said one panellist, "is in Asia, so to survive those exotic jurisdictions are going to have to highlight different services to survive as offshore financial centres. They are from an age that's coming to a close in terms of their current offerings."

Offshore to onshore

An understandable consequence of all this is that more and more clients are seeking to convert their offshore structures to transparent onshore structures. "There is clearly a reputational danger in being associated with those exotic jurisdictions, especially after the media leaks surrounding their use," opined one expert. And it is now extremely difficult to open bank accounts in those markets, which is another limiting factor that will drive more structures back onshore.

The discussion closed with a comment on the distinction between avoidance and tax planning. "Remember that a tax payer was always free to carry out and structure their affairs in any way they pleased, but that is the traditional principle that is being eroded at the moment. Accordingly, we must all be extremely cautious in assessing what is tax mitigation and what is avoidance, so, for example, are you manipulating a relief in a way that was never intended. The penalties for advisers are severe, so we must all stay carefully on the right side of prudent advice." ■