

Notes of Wealthy External Forum
13 May 2021 via Conference Call

Attendees:

HMRC

Alan Blaney (Deputy Director – Wealthy and Forum Chair)

Elizabeth McAuley (Secretariat)

Gareth Batchelor (Wealthy External Engagement Lead)

Linzi Gribben (Wealthy External Engagement Strategic Lead)

Helen Bennett (Wealthy Upstream Lead)

Cameron Wilson (Wealthy Portfolio Lead)

Vanessa Cordner (WMBC Assets)

Iain Mottram (CS&TD Business, Assets & International)

Zosia Edwards (CS&TD CIDD)

Callum Atkinson (WMBC Wealthy)

Edward Neale (WMBC Wealthy)

Joe Richards-Gallagher (Wealthy External Engagement)

Lisa Glanville (CS&TD HMRC Strategies - Observer)

Steven Wood (WMBC CPCE Charities Large Partnerships & International - Observer)

Emma Coupland (Note-taker)

External Forum Members

Mark Levitt (ICAEW)

Stuart Ritchie (ICAEW)

David Mellor (CIOT)

Kate Willis (CIOT)

David Hughes (CIOT)

Imogen Davies (Law Society)

Janet Pierce (AIETP)

Penelope Lang (ICAS)

Robert Carrington (STEP)

Elizabeth Hartless (EBG)

Alan Gourley (CAI)

Phil Hall (AAT)

1. Welcome and Introduction

Elizabeth McAuley (EM) opened the meeting, performed a roll call of external attendees, introduced the HMRC participants. EM said the camera function could be used when speaking and to use the hands up or chat facility for questions. EM then handed over to Alan Blaney (AB).

2. Deputy Director Introduction

AB welcomed everyone to the meeting.

AB referred to the updated Terms of Reference and said these would be published alongside the minutes and went on to discuss confidentiality. AB said the aim of the forum is to be open and share information, however, there will be some things that can't be shared more widely. AB advised the members to assume that details are in confidence unless in the public domain or told otherwise. AB reminded the group that minutes will be published at gov.uk but there may be some items or information which will not be contained within the minutes for reasons of confidentiality. Members provided the following questions and comments:

- Can the information be shared with committee members who have signed a confidentiality agreement? AB said that if any members have any doubts about confidentiality to ask.

3. Helping taxpayers get offshore tax right

Iain Mottram (IM) shared a discussion document ahead of the meeting which can be found on gov.uk. Responses are due by 15 June. IM encouraged members to share ideas.

Background

Who we are – Centre for Offshore Strategy. The team is responsible for developing and implementing HMRC's strategy for tax on offshore income and assets.

What we do – Implement HMRC's No Safe Havens strategy for tackling non-compliance with regards to tax due on offshore income and assets.

Why publish these discussion documents now? The No Safe Havens strategy was refreshed in 2019 to cover all non-compliance behaviours which gives us a good opportunity to start exploring how best to tackle issues with external stakeholders.

Understanding errors

- Error and failure to take reasonable care together make up 28% of the total UK tax gap.
- This could be due to arrange of factors, but could include:
 - Not being aware of offshore tax obligations
 - Guidance and communications relating to 'offshore income' not being relevant or clear
 - Reliance on anecdotal evidence of out-of-date advice
 - Not asking for help and support until the tax return is due.

- This can lead to some paying less (or sometimes, more) tax than they should, resulting in intervention by HMRC.

Using data to promote offshore tax compliance

IM talked about data sharing and how we can use it better and the sources of data we have.

Making it easier for taxpayers

IM discussed guidance and education and providing real time help to taxpayers, public communications, informing taxpayers based overseas of their UK tax obligations and how HMRC can use digital prompts and technology. IM said it's about ensuring the right people see the communications and making it easier to find things. There is currently a trial regarding prompts for CRS data.

Working with Agents and Intermediaries

IM discussed working with agents and intermediaries and financial intermediaries to explore ways of working together and highlight the advantages.

Overarching questions

IM asked the members to consider the questions and send views to the forum or by email.

- Do you agree with the causes of offshore non-compliance that we set out in the paper?
- Are there other factors that we should address to improve offshore compliance?
- Do you consider the possible approaches suggested in this paper would be effective to help ensure offshore tax compliance?
- What further ideas do you have to help taxpayers get their offshore tax right?

Next steps

- **First workshop: Data Transparency in the Self Assessment Tax Return**
- *Wednesday 12th May 9:00 - 11:00am*
- **Second workshop: Understanding and Collecting Data**
- *Monday 17th May 10:00am – 12:00 noon*
- **Third workshop: Improving the collection of international tax debt**
- *Tuesday 18th May 10:30am – 12:30pm*
- **Fourth workshop: Improving Education and Guidance**
- *Monday 24th May 10:00am – 12:00 noon*
- **Fifth workshop: Cross-Sector Collaboration**
- *Wednesday 26th May 1:00-3:00pm*

Responses should be sent by 15 June 2021, by e-mail to consult.nosafehavens@hmrc.gov.uk

Members provided the following questions and comments:

- Perhaps the term 'offshore' is a cause of misunderstanding. People may not perceive income from say France as offshore as the term has connotations of tax havens. Would 'non-UK' be better?

4. Wealthy Portfolio Structure

Cameron Wilson (CW) introduced himself as the Policy and Portfolios Lead.

Role of Portfolios

- Provide additional support for our staff in complex areas
- Enable us to gain better insight
- Create a useful communications channel with other stakeholders
- Currently very focussed on internal comms but looking to increase external engagement

What do they look like?

- Each one has a lead who will work with a network of locally based contacts
- regular catchups
- mechanism for hot topics or problems to be discussed as they arise
- direct links to relevant “Head Office” specialists
- Significant role in capability building for staff across Wealthy

Beyond the technical space

- Engage with HMRC Policy specialists and may be involved in early stage discussions about potential Policy measures as well as later evaluation
- Important to emphasise that ultimately Policy is a matter for HM Treasury and Ministers, our role is to provide insight and assistance

Engaging externally

- Will look for opportunities to engage with external stakeholders where this is possible and appropriate
- Important to remember that they sit within an operational space and are not the “Head Office” channel for guidance

The Portfolios in a bit more detail

- Fall into two main groups;
 - Capital Taxes – broadly aligns with HMRC’s Capital Taxes Liaison Group
 - International
 - Business Tax
- Taxes Framework (penalties, information powers, discovery etc)
- Evasion

Capital Taxes

- CGT
 - A large and very active portfolio for obvious reasons and has a large membership within Wealthy
 - Overlaps with many of the international issues

- Charities
 - Probably not the most obvious to be in Capital Taxes
 - Obvious interest in Gift Aid but thinking far more widely into the behavioural aspects
- Venture Capital Reliefs
 - Includes EIS, SEIS and VCT as current VCRs
- Domicile and Remittance Basis
 - Complex and challenging technically
 - Heavy commitment to capability building within the operational teams
- Transfer of Assets Abroad
 - As well as the normal “portfolio approach”, they are directly involved in supporting caseworkers with a well-resourced team operating across Wealthy
 - Very active dialogue with HO specialists and the team in WMBC Assets
- Residence
- Treaties and FTCD
- Offshore Powers & Data
 - Includes matters such as CRS, RTC, Offshore Penalties

Business tax

- Lead for this portfolio is in the process of changing
- Covers Self Employments and Property Income

Tax Administration Framework

- Quite wide ranging Portfolio covering SA legislation, Penalties, Information Powers
- Key role in capability and standards

Evasion

- Steers our strategy for identifying and tackling evasion (domestic and offshore)
- Works closely with wider HMRC stakeholders

Members provided the following questions and comments:

- How long has the Wealthy Portfolios approach been in place? CW said 10 years, but the current structure is less than a year old. The leads are currently exploring ideas on improving external visibility.
- Delays from Head Office Specialists – CW advised that where cases are becoming difficult the Portfolio Lead can intervene. CW said he would discuss this with the team.

- In terms of external visibility are you saying these leaders can be contacted directly? CW explained that at the moment the leads work behind the scenes, but they are looking at how they can communicate externally in the future.

5. Family Investment Companies

Vanessa Cordner (VC) discussed the findings of the Family Investment Company (FIC) team set up by HMRC in April 2019 to conduct research into the use of FICs given their increasing popularity. The objective of the research was to establish an improved understanding of FICs in order that HMRC can better support taxpayers who use FICs to understand and comply with their tax obligations.

Introduction

In recent years, Family Investment Companies (FICs) have become more popular than trusts. Historically, trusts were the vehicle of choice for long term management and preservation of family and intergenerational wealth, however legislative changes over the past 10-15 years have reduced the financial benefits associated with trusts and increased the costs of managing family wealth through these structures.

HMRC established a Family Investment Company team in April 2019 to carry out research into the use of FICs. They undertook a detailed review of several FICs and their associated trusts/shareholders using information contained on HMRC systems. A number of FICs were also contacted in writing to gain additional insight to inform the research findings.

The team sought to establish the common characteristics of FICs and the age and wealth profile of people who have set up this kind of structure. They also investigated areas of tax risk associated with FICs and if there was a correlation between those who operate FICs with evidence of non-compliant behaviours.

The objective of this research was to establish an improved understanding of FICs in order that HMRC can better support taxpayers who use FICs to understand and comply with their tax obligations.

This team has now concluded its work and this report provides an overview of its findings.

What is a Family Investment Company (FIC)?

The aim of a FIC is to pass wealth to future generations in a tax efficient way.

HM Revenue and Customs (HMRC) has no statutory definition of a family investment company (FIC) because they are all set up and operate differently. Most FICs do, however, share the following characteristics:

- Shareholders are members of the same family (usually over at least two generations).
- Shareholdings can be direct or via a trust for the benefit of family members.
- There are multiple classes of share.
- Rights attached to the shares often differ depending on the age or generation of the shareholder. Older generations tend to retain voting rights whereas younger generations hold rights to income or capital on winding up.
- The company does not trade but holds investments, often in the form of stocks and shares or land and buildings.

Who uses a FIC?

In a sample of FICs reviewed by HMRC, the average assets amounted to around £5m, leading HMRC to conclude that FICS are mainly used by wealthy people. In compliance terms, wealthy people are defined as having an annual income exceeding £200,000, or those with wealth of more than £2 million.

Further analysis showed that FICs are not a vehicle often used by the extremely wealthy, who tend to use family offices to manage their wealth.

The age of individuals setting up a FIC varies but most tend to be 50+ and the majority of people setting them up are male.

In the research we undertook there was no evidence to suggest that there was a correlation between those who establish a FIC structure and non-compliant behaviours. As with any analysis of a taxpaying population, the same broad range of tax-compliance behaviours were observed, with no evidence to suggest those using FICs were more inclined towards avoidance.

Tax risks related to FICs

The key findings in relation to the tax risks associated with FICs are outlined below:

- The use of FICs appears to be a planning strategy, often with the primary objective generational wealth transfer and mitigation of Inheritance Tax.
- There is some diversity in the way that a FIC is structured and managed, creating tax risks and compliance activity across a variety of tax regimes, including Inheritance Tax, Capital Gains Tax, Stamp Duty Land Tax and Corporation Tax.

Conclusions

The team have been subsumed into WMBC and FICs are now looked at as business as usual rather than having a dedicated team.

The terms of reference for this Forum were refreshed so it was clear members had a duty of confidentiality. However, VC confirmed that this does not apply for this session so please feel free to discuss this issue publicly as there is an understanding that there is a public interest in the outcome of the team's research.

Members provided the following questions and comments:

- Are HMRC saying that they are not seeking to have specific FIC legislation? VC could not comment on what policy are looking at or about what might or might not happen going forward.
- Could HMRC consider that sometimes there are commercial reasons for FICs? VC accepted this.
- Will this discussion be fully noted? Yes, minutes will be available.
- Is there going to be any official announcement about FIC? VC was not aware of any announcement.

6. Call for Evidence: Raising Standards in the tax advice market

Zosia Edwards (ZE) introduced herself to the group and explained she was here to represent the Agent Reform Policy Team. ZE discussed the consultation on raising standards in the tax advice market. Her colleagues had previously presented on the matter in July last year and ZE wanted to provide an update on how the work has progressed since then.

ZE explained that she would be focusing on the consultation for raising standards in the tax advice market, which focuses on professional indemnity insurance and defining tax advice but will also allude to some other engagement work with professional bodies which may be of interest.

Background

How does this work on the consultation fit within the work we are doing to raise standards in the tax advice market?

In 2020, we conducted a call for evidence to gain insight on how we can raise standards in the tax advice market. Within our published summary of responses and next steps we made the following commitments:

- To raise awareness of the HMRC Standard for Agents and review HMRC powers to enforce the Standard
- To collaborate with professional bodies to understand the role they play in supervising and supporting their members and raising standards in the profession.

ZE advised her colleague had been in contact with many of the group's organisations to start engagement and seek participation in upcoming conversations. ZE said they would also be very grateful for any additional information members may have that could be relevant to our understanding of what 'good' looks like in terms of professional standards applied across the tax advice sector and the role professional bodies play in contributing towards that through the support and supervision they provide to their members.

The other commitments are as follows:

- To tackle high costs to consumers of agents claiming tax refunds, and
- To consult on a mandatory requirement for tax advisers to hold professional indemnity insurance and the definition of tax advice.

Why take action?

The tax advice market is not formally regulated. While most tax advisers are competent, adhere to high professional standards and support taxpayers effectively, there are a minority of agents operating unprofessionally, incompetently and in some cases even maliciously. This could be putting clients at risk and leaving them without effective recourse should something go wrong.

Why PII?

The call for evidence last year set out six potential approaches to raising standards in tax advice, and asked contributors for their views on them.

In analysing responses, we found that there was no consensus supporting the option for a new independent regulator for tax advisers. Some concerns were expressed about the impact of formal regulation on smaller businesses and specialist advisers, who often face implementation challenges from new interventions. Responses also highlighted the need to

consider the impact of formal regulation on advisers who may already be regulated elsewhere (for example, solicitors) to avoid any risks associated with dual regulation.

Many respondents suggested that making it compulsory for all tax advisers to hold professional indemnity insurance would provide a baseline level of taxpayer protection and would provide a variety of other benefits as shown on this slide:

Compulsory PII would provide a common minimum standard across all tax advisers; advisers would be reassured that they will be protected in the event of something going wrong, as would consumers and clients. Clients would be able to check if their adviser holds the required level of insurance, and most professional body members already hold professional indemnity insurance.

Defining 'tax advice'

Defining tax advice will be vital for ensuring that any requirement for professional indemnity insurance is applied appropriately, and to understand who would fall into the scope of this requirement.

We will be drawing on international precedent, and reaching out to a number of countries that have a mandatory PII requirement to understand their policies and enforcement processes.

As another potential starting point, on the screen are two legal definitions for tax advisers from the Dishonest Tax Agent penalty legislation and Money Laundering Regulations, which we could adopt.

You'll see that these focus on advice provided **by way of business**, which would exclude a family member or friend giving free advice, charitable organisations and employees within a company handling the organisation's own tax affairs. We are also considering where software providers and platforms would fall within such a definition.

We're hoping to gain views on this from the voluntary and community sector, software providers, customs intermediaries and brokers. If there are others you think we should be reaching out to please let us know. We are of course also grateful for your own views and those of your organisations.

Mandatory PII

We know that many professional bodies and regulatory bodies in other professions require their members to hold PII. As previously mentioned, there is also a degree of international precedent which we are currently investigating.

We want to balance consumer protection with affordability to make sure that any mandatory PII requirement is reasonable but effective.

On screen are some of the questions asked within the consultation. We are interested in any thoughts from respondents on what a mandatory PII requirement might look like and how it could be implemented – views could be informed by your own organisation's recommendations or experiences with similar requirements in other professions.

Implementation

Any mandatory PII requirement could impact tens of thousands of advisers who may not currently hold professional indemnity insurance.

We will be hosting discussions with the insurance sector to understand their capacity to meet the anticipated demand. In the meantime, we have suggested options for gradual implementation - by turnover, client base, number of clients, by type of tax or duty; or at the point when the advisor renews an authorisation or begins representing a client.

We would be grateful for any thoughts on these options.

Enforcement

We know that this requirement will only be as effective as our ability to enforce it. We propose 3 elements to the enforcement process: **transparency, checking and sanctions**.

- In terms of **transparency** we suggest enabling taxpayers to be fully informed about their adviser. There are a few options for this: agents displaying an insurance certificate; an online portal; a requirement within HMRC's standard; or publishing information about those not complying.
- When agents contact HMRC, we could introduce **checking** to require them to provide proof of PII; or proof of membership of a professional or regulatory body which also requires PII as a condition of membership
- **Sanctions** to tackle non-compliance could include the creation of a new offence; suspended access to HMRC online services; or imposing joint and several liability between taxpayers and agents.

Next steps

As discussed at the beginning, the consultation is just one of our commitments to raise standards. We have already been taking action on our other next steps displayed on screen. These include continuing our engagement during the consultation; working collaboratively with professional bodies to understand the professional standards applied across the tax advice sector; and raising awareness of HMRC's Standard for agents; as well as publishing the findings from an internal review of HMRC's powers in relation to the standard.

ZE reminded everyone that the consultation closes on the 15th June and encouraged members to share their views.

Members provided the following questions and comments:

- Concern that the 5 main insurers are negative about this plan.
- Concerned that their fees will increase.
- Why are the government going down this route when there is so little support? ZE advised that HMRC are consulting with the insurance industry over the next few weeks including carriers, intermediaries and professional bodies. ZE said that they hope to have on-going conversations and define it as widely as they can.
- In relation to how this raises standards: How does this deal with having non-regulatory advisors? ZE explained this is the initial first step of broader work they are doing to introduce a common standard that those giving tax advice would have to meet and is seen as a first step.

7. Upstream – Introduction and Update

Helene Bennett (HB) provided an update.

- The Upstream and One to Many programme will continue into this year and we will make sure you are briefed before any activities go live. I would like to take this opportunity to thank you for the support you gave to us last year and for the feedback provided which we will ensure is taken into account when designing this year's activities.
- Where we have activities that are new or may be of particular interest to you we will use future forums to invite the project leads to give short presentations outlining the activity being undertaken.
- To start us off we have a presentation from Callum Atkinson and Edd Neale on an EIS one to many project which will be issued in tranches over the next 6 months or so.

8. EIS Company Failures – Investor Compliance

Callum Atkinson (CA) introduced himself and Edd Neale (EN). They have been working on improving HMRC's compliance approach to Venture Capital Relief risks, specifically Enterprise Investment Scheme and Seed Enterprise Investment Scheme risks. Part of this involves working with the Venture Capital Reliefs Team (previously known as the Small Companies Enterprise Centre) to consider how we deal with the personal tax consequences when there is a failure at company level.

Background

Companies must meet a number of requirements for a set period of time, normally three years from the issue date of the shares, otherwise the Venture Capital Reliefs Team will take action to notify the company the affected share issue or issues no longer qualify for relief. For investors, it will mean that any Income Tax relief claimed in relation to the shares must be wholly withdrawn. Additionally, any deferred gains are revived in the year the company failure occurred, reinvested gains become chargeable in the year the shares were issued and the shares will no longer attract disposal relief should a gain arise on their disposal.

CA explained that in his experience companies may not notify investors about the failure or if they do, investors may not understand what action needs to be taken to deal with the consequences. Focussing on Income Tax relief specifically because it causes the most problems, unless the window to amend the return is still open, we need to make a special assessment to withdraw the relief, it's not something the investors can self assess. However, we've seen both investors and agents try to withdraw relief themselves in a variety of ways.

In 19/20 HMRC undertook a successful targeted one-to-one approach on a small number of companies with a small number of investors. While successful in dealing with the affected investors, it's not a feasible approach for dealing with companies with a large number of investors. We will now be testing a one-to-many approach to determine if this is more efficient.

One-to-many activity

1. The Venture Capital Reliefs Team (VCRT, formerly the SCEC) will continue to deal with the company and provide us with a list of affected investors.
2. We will notify the affected investors of the company failure and invite them to provide the information we need to deal with the personal tax consequences.

3. A compliance officer will arrange for the Special Assessment to be made and we can help advise in which year any revived gain or gain on the EIS/SEIS shares should be declared (following the loss of entitlement to disposal relief).

Goals

The main goal of this activity is to alert customers to company failures and help people understand how to deal with the consequences. Separately, we are considering how to encourage companies to notify their investors as early as possible because we know most investors will do the right thing at the right time. We want to make the process as straightforward as we can so that less time is spent on compliant customers and more time can be spent targeting non-compliant customers.

Previously, customers or agents may have corresponded with Personal Tax Operations, a ring-fenced processing office, the Venture Capital Reliefs Team and Compliance to deal with the various parts of the withdrawal process. By introducing this new approach we want to give customers and agents just one point of contact to deal with all the consequences at the same time.

Common agent approach

CA said they have identified that groups of customers will be represented by the same agent and that customers may be affected by more than one company failure. When this happens, we'd like to contact the agent about all their clients at the same time. We hope this will reduce the time agents need to spend reviewing records if our requests are grouped in this way. We plan to find an appropriate point of contact within each firm and provide a list of all affected investors in one go to reduce the number of separate requests we need to make.

CA advised they will begin this process shortly and have no objection to members sharing this forthcoming approach.

Members provided the following questions and comments:

- Feedback on the letter that HMRC issued was that it came across as somewhat aggressive as it said penalties may apply, but the individual customer may well have done nothing wrong or be unaware that the company has failed to meet some of the conditions. CA recognised that penalties are not always appropriate, and it would depend on why the relief was withdrawn. If relief was withdrawn under S235 ITA 2007 via a Special Assessment then penalties would not apply. However, if the relief was withdrawn via a S9A enquiry or a S29 TMA 1970 assessment, the reason for the incorrect claim would be considered and Schedule 24 penalties may be charged.
- Is the approach to these letters considered by the One-to-Many Advisory Board? CA confirmed that it is.

9. AOB

- Is there an update on the Offshore Capital Investment Schemes (OCIS) compliance project including the reporting Excess Reportable Income? GB advised the member to send an email to the DL so they can find out.

GB thanked everyone for attending and hoped they had found the content interesting. The team are working on future content but if anyone has any feedback or questions to email the DL email address.

EM thanked everyone for their contributions and said the next forum date is to be arranged.

End of meeting.