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Global transparency

Investors should understand the impact of a transparent financial system on their investments

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MANY investors hold investment assets offshore, often under investment holding companies. Such structures were seen to have benefits such as avoiding lengthy probates, as well as giving an additional level of confidentiality, among other benefits. However in recent years, significant changes in global finance regulations mean that every investor should re-examine their personal need for such offshore structures.

In 2010, the US enacted new legislation called the Foreign Account Tax Compliance Act (FATCA), which was the US government's way of ensuring that all US citizens, especially the ones living overseas, pay all relevant US taxes on their investment income and capital gains. The US is one of the few countries that taxes individuals based on citizenship, not residency.

FATCA brought significant implementation challenges to the financial industry globally, as institutions had to put additional safeguards in place to identify whether any individuals had US dual-citizenship, or a US Green Card. Many Asian investors were out of scope and simply had to sign an additional declaration to their financial institutions, certifying that they were not a US Person.

However, other governments watched the results from this new regulation with interest, as many other countries, particularly Europe, were also struggling with identifying European Union (EU) residents who held undeclared accounts offshore. The EU levies tax based on residency, not citizenship so, for example, a Singaporean living in Europe would be subject to global disclosure of all investments, which would be subject to EU income and capital gains taxes.

Common Reporting Standard

Voluntary disclosures, as would be expected, did not have the result that EU governments wanted. Seven years after FATCA, the Organisation for Economic Co-operation and Development (OECD) developed the Common Reporting Standard (CRS), which is now in effect globally and impacts every investor. In essence, CRS will mean that countries will exchange reportable accounts information.

This includes personal information as well as account balances. The exact details of the implementation of CRS are complicated and vary from country to country, but these regulations will result in significant transparency on every investor's financial position.

This is not purely a US/European issue, as many governments already have seized on this opportunity to get more disclosures directly, as Indonesians did with the tax amnesty implemented earlier this year. The world will see more such initiatives in the future.

All these regulations mean that multi-jurisdiction investment holding structures may end up with details being automatically reported to different countries. Let's take the example of a Singapore resident and beneficial owner, who holds their investments via a BVI company with an account booked offshore in Hong Kong or Switzerland, itself held by a Guernsey trust with a Protector that resides in Australia.

In the past, such a holding structure could have offered a higher degree of confidentiality and anonymity. However, under the current CRS regulations, the bank accounts' information may end up being reported to every country that is involved in the holding structure.

While every country will be able to decide on a case-by-case basis which information will be exchanged, a possible interpretation is that a Protector holds considerable power over a trust, and therefore the assets would also be reportable to the Protector's country of citizenship or residence.

One of the likely outcomes of CRS is for individuals' financial transactions to increasingly move from offshore to onshore, and in simplified holding structures.

Investors should take this opportunity to consult their financial advisers, and obtain legal advice where needed, on the current implications of older investment holding structures as the world transitions to a transparent system of financial transactions and reporting. W

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